THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 17

Chapters 130 through 136

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 17 contains the general laws of a permanent nature enacted by the general Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

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ARTICLE 1.

Definitions, General Provisions and Remedies.

Part 1. General Provisions.

§ 130A-4. Administration.

CASE NOTES

Director of County Health Department Was a Public Officer. — The Director of the Transylvania County Health Department, was a public officer and was liable in civil suit only upon a showing of malice. EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-5. Duties of the Secretary.

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health; to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary for investigating a disease or health hazard that may present a clear danger to the public health. Records shall be identified as necessary by joint agreement of a Department physician and the patient's attending physician. However, if the Department is unable to contact the attending physician after reasonable attempts to do so, or if the Department determines that contacting all attending physicians of patients involved in an investigation would be impractical or would unreasonably delay the inquiry and thereby endanger the public health, the records shall be identified as necessary by joint agreement of a Department physician and the health care facility's chief of staff. For a facility with no chief of staff, the facility's chief administrator may consent to the Department's review of the records. Any person, authorized to have or handle such records, providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion of privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease.

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs;

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not

exceed the cost of the form and shipping costs. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14; 1969, c. 982; 1973, c. 476, ss. 128, 138; 1979, c. 714, s. 2; 1981, c. 562, s. 4; 1983, c. 891, s. 2; 1985, c. 470, s. 1; 1991, c. 227, s. 1; 1993 (Reg. Sess., 1994), c. 715, s. 1.)

Editor's Note. —

Session Laws 1993, c. 321, s. 208, as amended by Session Laws 1993, c. 522, ss. 21-23, provides:

"(a) Legislative Findings. — The General Assembly finds:

"(1) That there is a need in North Carolina to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior;

"(2) That children meeting these criteria have been identified as a class in the case of *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.*; and

"(3) That these children have a need for a variety of services, in addition to those normally provided, that may include, but are not limited to, residential treatment services, educational services, and independent living arrangements.

"(b) Funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of the Willie M. Class identified in *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.*, including evaluations of potential class members. The Department shall reallocate these funds among services to Willie M. Class members during the year as it deems advisable in order to use the funds efficiently in providing appropriate services to Willie M. Class children.

"(c) Funds for Aid to Local School Administrative Units — Funds appropriated to Aid to Local School Administrative Units in this act for members of the Willie M. Class are to establish a supplemental reserve fund to serve only members of the Willie M. class identified in *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.* These funds shall be allocated by the State Board of Education to the local education agencies to serve those class members who were not included in the regular average daily membership and the census of children with special needs, and to provide the additional program costs which exceed the per pupil allocation from Aid to Local School Administration Units and other State and federal funds for children with special needs."

"(d) The Department of Human Resources shall continue to implement its prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary, and based upon these reviews and comparisons, the Department shall reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service.

"Any exception to this requirement shall be approved by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall be reported in the Department's annual joint report to the Governor and the General Assembly and in any periodic report the Department may make to the Joint Legislative Commission on Governmental Operations.

"(d1) The Department of Human Resources shall implement a process to review those cases for whom treatment has been recommended whose annual cost is anticipated to be in excess of one hundred fifty percent (150%) of the average annual per client expenditure of the previous fiscal year and shall take actions to reduce these treatment costs where appropriate.

"(e) Reporting Requirements. — The Department of Human Resources, the State Board of Education, and the Department of Public Instruction shall submit, by May 1, of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class. The report shall include the following unduplicated data for each county: (i) the number of children nominated for the Willie M. Class; (ii) the number of children actually identified as members of the Class in each county; (iii) the number of children served as members of the Class in each county; (iv) the number of children who remain unserved or for whom additional services are needed in order to be determined to be appropriately served; (v) the types and locations of treatment and education services provided to Class members; (vi) the cost of services, by type, to members of the Class and the maximum and minimum rates paid to providers for each service; (vii) the number of cases whose treatment costs were in excess of one hundred fifty percent (150%) of the average annual per client expenditure; (viii) information on the impact of treatment and education services on members of the Class; (ix) an explanation of, and justification for, any waiver of departmental rules that affect the Willie M. program; and (x) the total State funds expended, by program, on Willie M. Class members, other than those funds specifically appropriated for the Willie M. programs and services.

"(e1) From existing funds available to it, the Department of Human Resources shall begin a process to document and assess individual class members' progress through the continuum of services. Standardized measures of functioning shall be administered periodically to each member of the Class, and the information generated from these measures shall be used to assess client progress and program effectiveness.

"(f) The Department of Human Resources, the State Board of Education, and the Department of Public Instruction shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class and to the Fiscal Research Division. As part of these reports, the Departments shall explain measures they have taken to control and reduce program expenditures.

"(g) In fulfilling the responsibilities vested in it by the Constitution of North Carolina, the General Assembly finds:

"(1) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to their social and economic priorities; and

"(2) That the funds appropriated will enable the development and implementation of placement and services for the Class members in *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.*, within a reasonable period of time considered within the context of the needs of the class members, the other needs of the State and the resources available to the State.

"(h) The General Assembly supports the efforts of the responsible officials and agencies of the State to meet the requirements of the court order in *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.* To ensure that Willie M. Class members are appropriately served, no State funds shall be expended on placement and services for Willie M. Class members except:

"(1) Funds specifically appropriated by the General Assembly for the placement and services of Willie M. Class members; and

"(2) Funds for placement and services for which Willie M. Class members are otherwise eligible.

"This limitation shall not preclude the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Wille M. program subject to approval by the Director of the Budget. These Willie M. expenditures shall not be subject to the requirements of G.S. 143-18.

"(i) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing appropriate services to members of the Class identified in *Willie M., et al. v. Hunt, et al.*, formerly *Willie M., et al. v. Martin, et al.*, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of such programs."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.17 amends Session Laws 1993, c. 321, s. 208 by adding a new subsection to read:

"(j) The Secretary of the Department of Human Resources shall adopt rules to be followed in the provision of services for disabled, violent, and assaultive children who have not reached their eighteenth birthday. These rules shall allow for the continuation of services to any child the Secretary determines is being appropriately served until the end of the fiscal year in which the child reaches the age of 18 or until six months after the child reaches the age of 18, whichever period is longer."

Session Laws 1993, c. 321, s. 321, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, in subdivision (2) substituted "health;" for "health" following "public," deleted "by joint agreement of the attending physician and a Department physician" preceding "for investigating a disease," added the second, third, and fourth sentences, and substituted "person, authorized to have or handle such records" for "physician" in the last sentence.

§ 130A-14. Department may assist private nonprofit foundations.

(a) The Secretary may allow employees of the Department to assist any private nonprofit foundation that works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department, and may provide other appropriate services to any such foundation. No employee of the Department may work with a foundation for more than 20 hours in any one month. Chapter 150B of the General Statutes does not apply to any assistance or services provided to a private nonprofit foundation pursuant to this section.

(b) The board of directors of any private nonprofit foundation that receives assistance or services pursuant to this section shall secure and pay for the services of the Department of State Auditor or shall employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors of the foundation shall transmit a copy of the annual financial audit report to the Secretary. (1991, c. 761, s. 37.3; 1993, c. 553, s. 40.1.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in the third sentence of subsection (a) substituted "or" for "of" preceding "services provided".

Part 2. Remedies.

§ 130A-19. Abatement of public health nuisance.

CASE NOTES

Cited in EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-22. Administrative penalties.

(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.

(8) If applicable, the size of the renovation and demolition involved in the violation.

Administrative penalties imposed by the Secretary under this subsection or subsection (b2) of this section shall be credited to the General Fund as nontax revenue.

(b2) The penalty for violations of the asbestos NESHAP for renovations and demolitions, as defined in G.S. 130A-444, shall not exceed ten thousand dollars ($10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for renovations and demolitions that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for renovations and demolitions is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of the administrative penalty whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection. (1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c. 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, added subsections (b1) and (b2).

§ 130A-23. Suspension and revocation of permits and program participation.

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-228 or G.S. 130A-248 shall be revoked immediately for failure of a market or a facility to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and shall immediately file a petition for a contested case in accordance with G.S. 150B-23. (1983, c. 891, s. 2; 1987, c. 827, s. 1; 1987, c. 438, s. 3; 1993, c. 211, s. 2; 1993 (Reg. Sess., 1994), c. 732, s. 2.)

Editor's Note. — The introductory language of s. 2 of Session Laws 1993 (Reg. Sess., 1994), c. 732 provides that the amendment by s. 2 is effective January 1, 1995, "except subsection (c) which becomes effective 30 days after ratification." However, subsection (c) was not amended by c. 732, s. 2.

Session Laws 1993 (Reg. Sess., 1994), c. 732, which amended this section, in s. 3 provides: "The Commission for Health Services shall adopt whatever temporary rules it deems necessary to minimize the risk of suction-related injuries to children during the 1994 pool season."

Session Laws 1993 (Reg. Sess., 1994), c. 732, which amended this section, in s. 4 provides: "The Department of Environment, Health, and Natural Resources shall disseminate not later than 15 days after ratification of this act written information designed to adequately inform local health departments, public swimming pool operators, and the general public of the presence of and ways to avoid hazards related to the use and operation of public swimming pools. This information shall include easily understandable language relating to suction hazards in wading pools."

Effect of Amendments. — The 1993 amendment, effective June 24, 1993, in subsection (d), inserted the second sentence and substituted "A" for "Also, a" at the beginning of the present third sentence.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, inserted "or design and construction standards pertaining to the abatement of suction hazards" in subsection (d).

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) Any person appealing an action taken by the Department pursuant to this Chapter or rules of the Commission shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later than 30 days after notice of the action which confers the right of appeal unless a federal statute or regulation provides for a different time limitation. The time limitation imposed under this subsection shall commence when notice of the agency decision is given to all persons aggrieved. Such notice shall be provided to all persons known to the agency by personal delivery or by the placing of notice in an official depository of the United States Postal Service addressed to the person at the latest address provided to the agency by the person.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with subsections (b), (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than 10 days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248; 1993, c. 211, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 24, 1993, and applicable to appeals taken on or after October 1, 1993, added subsection (a1).

§ 130A-25. Misdemeanor.

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Division of Prisons, Department of Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Division of Prisons, Department of Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Correction after consultation with the State Health Director. The Secretary of Correction shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court. (1983, c. 891, s. 2; 1987, c. 782, s. 19; 1991, c. 187, s. 1; 1993, c. 539, s. 946; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 767, s. 18.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1993 amendment, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (a).

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, deleted "Class 1" in subsection (a); in subsection (b) deleted "for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or," inserted "shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and"; and deleted "for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or" in subsection (c).

§ 130A-26. (Effective October 1, 1994 — See editor's note) Violations of Article 4.

A person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

(1) Willfully and knowingly makes any false statement in a certificate, record or report required by Article 4 of this Chapter or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment;

(2) Without lawful authority and with the intent to deceive makes, counterfeits, alters, amends or mutilates a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report;

(3) Willfully and knowingly obtains, possesses, uses, sells or furnishes to another person, for any purpose of deception, a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report, which is counterfeited, altered, amended or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) A person employed by the Vital Records Branch or designated under Article 4 of this Chapter who willfully and knowingly furnishes or processes a certificate of birth, or

certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception;

(5) Without lawful authority possesses a certificate, record or report required by Article 4 of this Chapter or a certified copy of the certificate, record or report knowing that it was stolen or otherwise unlawfully obtained;

(6) Remove or permit the removal of a dead body of a human being without authorization provided in Article 4 of this Chapter;

(7) Refuse or fail to furnish correctly any information in the person's possession or shall furnish false information affecting a certificate or record required by Article 4 of this Chapter;

(8) Willfully alter, except as provided by G.S. 130A-118, or falsify a certificate or record required by Article 4 of this Chapter; or willfully alter, falsify or change a photocopy, certified copy, extract copy or any document containing information obtained from an original or copy of a certificate or record required by Article 4 of this Chapter or willfully make, create or use any altered, falsified or changed record, reproduction, copy or document for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown on it;

(8a) Without lawful authority, manufacture or possess a Vital Records Section seal, or a reproduction or a counterfeit copy of the seal;

(9) With the intention to deceive, willfully use or attempt to use a certificate of birth or certified copy of a record of birth knowing that the certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(10) Willfully and knowingly furnish a certificate of birth or certified copy of a record of birth with the intention that it be used by an unauthorized person or for an unauthorized purpose; or

(11) Fail, neglect or refuse to perform any act or duty required by Article 4 of this Chapter or by the instructions of the State Registrar prepared under authority of the Article. (1983, c. 891, s. 2; 1993, c. 146, s. 1; c. 539, s. 947; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1993, c. 146, s. 1, effective October 1, 1993, deleted "or" from the end of subdivision (4); in subdivision (8) substituted "G.S. 130A-118" for "G.S. 130A-123 [G.S. 130A-118]"; and added subdivision (8a).

Session Laws 1993, c. 539, s. 947, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "general misdemeanor" in the introductory language.

§ 130A-26.1. Criminal violation of Article 9.

(a) The definition of "person" set out in G.S. 130A-290 shall apply to this section. In addition, for purposes of this section, the term "person" shall also include any responsible corporate or public officer or employee.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) **(Effective October 1, 1994 — See editor's note)** Any person who knowingly and willfully does any of the following shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues:

(1) Transports or causes to be transported any hazardous waste identified or listed under G.S. 130A-294(c) to a facility which does not have a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq.

(2) Transports or causes to be transported such hazardous waste with the intent of delivery to a facility without a permit.

(3) Treats, stores, or disposes of such hazardous waste without a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq., or in knowing violation of any material condition or requirement or such permit or applicable interim status rules.

(g) **(Effective October 1, 1994 — See editor's note)** Any person who knowingly and willfully does any of the following shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that the fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues:

(1) Transports or causes to be transported hazardous waste without a manifest as required under G.S. 130A-294(c).

(2) Transports hazardous waste without a United States Environmental Protection Agency identification number as required by rules promulgated under G.S. 130A-294(c).

(3) Omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with rules promulgated under G.S. 130A-294(c).

(4) Generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil burned for energy recovery and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with rules promulgated under G.S. 130A-294(c).

(h) For the purposes of subsections (f) and (g) of this section, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(i)(1) **(Effective October 1, 1994 — See editor's note)** Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste or used oil regulated under G.S. 130A-294(c) in violation of subsection (f) or (g) of this section, who knows at the time that he thereby places another person in imminent danger of death or personal bodily injury shall be guilty of a Class C felony which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
  a. His conduct, if he is aware of the nature of his conduct;
  b. An existing circumstance, if he is aware or believes that the circumstance exists; or
  c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
  a. The person is responsible only for actual awareness or actual belief that he possessed; and
  b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(j) Any person convicted of an offense under subsection (f), (g), or (h) of this section following a previous conviction under this section shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subsection under which the second or subsequent conviction occurs. (1989 (Reg. Sess., 1990), c. 1045, s. 9; 1993, c. 539, ss. 1303-1305; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "which may include" for "punishable by" in the introductory language of subsections (f) and (g); deleted "or by imprisonment not to exceed five years, or by both" at the end of the introductory language of subsection (f); substituted "Class I felony" for "Class J felony" in the introductory language of subsection (g); deleted "or by imprisonment not to exceed three years, or by both" at the end of the introductory language of subsection (g); substituted "Class C felony which may include a" for "Class H felony punishable by imprisonment not to exceed 10 years or by" in subdivision (i)(1); and deleted "or by both, in the discretion of the court" at the end of subdivision (i)(1).

§ 130A-26.2. Penalty for false reporting under Article 9.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under Article 9 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars ($10,000). (1993 (Reg. Sess., 1994), c. 598, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 598, s. 5, made this section effective January 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 598, s. 4 authorizes the Environmental Review Commission to study, in cooperation with personnel designated by the Secretary of Environment, Health, and Natural Resources, the possible implementation of a program that would use licensed site professionals to oversee voluntary and other remedial actions by responsible parties in lieu of oversight by State personnel, the procedures and standards that would govern the designation and licensing of licensed site professionals, the functions of licensed site professionals, and the weight to be accorded by a State agency to any work overseen and approved by a licensed site professional.

ARTICLE 1A.

Commission for Health Services.

§ 130A-29. Commission for Health Services — creation, powers and duties.

(a) The Commission for Health Services is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.
(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.
(7) Establishing statewide health outcome objectives and delivery standards.
(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(d) The Commission is authorized to create:
(1) Metropolitan water districts as provided in G.S. 162A-33;
(2) Sanitary districts as provided in Part 2 of Article 2 of this Chapter; and
(3) Mosquito control districts as provided in Part 2 of Article 12 of this Chapter.

(e) Rules adopted by the Commission shall be enforced by the Department. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6; 1979, c. 41, s. 1; 1981, c. 614, s. 9; 1983, c. 891, s. 15; 1983 (Reg. Sess., 1984), c. 1022, s. 5; 1989, c. 727, ss. 175, 176; 1989 (Reg. Sess., 1990), c. 1004, s. 50; c. 1075, s. 1; 1991, c. 548, s. 2; 1993, c. 321, s. 274; 1993 (Reg. Sess., 1994), c. 670, s. 3.)

Editor's Note. —
Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. —
The 1993 amendment, effective July 1, 1993, added subdivision (c)(5a).

The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, added subdivision (c)(8) and made punctuation changes.

§ 130A-33. Commission for Health Services — regular and special meetings.

Each year there shall be four regular meetings of the Commission for Health Services, one of which shall be held conjointly with a general session of the annual meeting of the North Carolina Medical Society. The State Health Director shall submit an annual report on public health at this meeting. The other three meetings shall be at such times and places as the chairman of the Commission shall designate. Special meetings of the Commission may be called by the chairman, or by a majority of the members of the Commission. (1973, c. 476, s. 127; 1989, c. 727, ss. 175, 178; 1993, c. 513, s. 6.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in the first sentence, deleted "during the annual meeting and" preceding "conjointly", inserted "of the annual meeting" and deleted from the end "at which time and place the annual report shall be submitted by the Secretary of Environment, Health, and Natural Resources or his designee"; and added the second sentence.

ARTICLE 1B.

Commissions and Councils.

Part 3. Minority Health Advisory Council.

§§ 130A-33.45 through 130A-33.49: Reserved for future codification purposes.

Part 4. Advisory Committee on Cancer Coordination and Control.

§ 130A-33.50. Advisory Committee on Cancer Coordination and Control established; membership, compensation.

(a) The Advisory Committee on Cancer Coordination and Control is created in the Department of Environment, Health, and Natural Resources.

(b) The Committee shall have 24 members, including the Secretary of the Department of Environment, Health, and Natural Resources, who shall chair the Committee. The members of the Committee shall elect a vice-chair from among the Committee membership. The Committee shall meet at the call of the chair. Six of the members shall be legislators, three of whom shall be appointed by the Speaker of the House of Representatives, and three of whom shall be appointed by the President Pro Tempore of the Senate. Two of the members shall be cancer survivors, one of whom shall be appointed by the Speaker of the House of Representatives, and one of whom shall be appointed by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) One member from the Department of Environment, Health, and Natural Resources;

(2) Three members, one from each of the following: the Department of Human Resources, the Department of Public Instruction, and the North Carolina Community College System;

(3) Four members representing the cancer control programs at North Carolina medical schools, one from each of the following: the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Duke University School of Medicine, and the East Carolina University School of Medicine;

(4) One member who is an oncology nurse representing the North Carolina Nurses Association;

(5) One member representing the Cancer Committee of the North Carolina Medical Society;

(6) One member representing the Old North State Medical Society;

(7) One member representing the American Cancer Society, North Carolina Division, Inc.;

(8) One member representing the North Carolina Hospital Association;
(9) One member representing the North Carolina Association of Local Health Directors;
(10) One member who is a primary care physician licensed to practice medicine in North Carolina.

Except for the Secretary of the Department of Environment, Health, and Natural Resources, the members shall be appointed for staggered four-year terms and until their successors are appointed and qualify. However, the following appointees shall serve initial two-year terms: two of the legislators appointed by the Speaker of the House of Representatives; one of the legislators appointed by the President Pro Tempore of the Senate; the cancer survivor appointed by the President Pro Tempore of the Senate; and the members representing the Department of Human Resources, the Department of Public Instruction, the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Cancer Committee of the North Carolina Medical Society, the Old North State Medical Society, the North Carolina Hospital Association, and the North Carolina Association of Local Health Directors. The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term.

(c) The Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor shall make their appointments to the Committee not later than 30 days after the adjournment of the 1993 Regular Session of the General Assembly. A vacancy on the Committee shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(d) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the Committee shall constitute a quorum for the transaction of its business.

(f) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. The Secretary of Environment, Health, and Natural Resources shall provide clerical and other support staff services needed by the Committee. (1993, c. 321, s. 288.)

Editor's Note. — Session Laws 1993, c. 321, s. 323 made this Part effective July 1, 1993.

Session Laws 1993, c. 321, s. 322 is a severability clause.

§ 130A-33.51. Advisory Committee on Cancer Coordination and Control; responsibilities.

(a) The Advisory Committee on Cancer Coordination and Control has the following responsibilities:

(1) To recommend to the Secretary a plan for the statewide implementation of an interagency comprehensive coordinated cancer control program;

(2) To identify and examine the limitations and problems associated with existing laws, regulations, programs, and services related to cancer control;

(3) To examine the financing and access to cancer control services for North Carolina's citizens, and advise the Secretary on a coordinated and efficient use of resources;

(4) To identify and review health promotion and disease prevention strategies relating to the leading causes of cancer mortality and morbidity;

(5) To recommend standards for:
  - a. Oversight and development of cancer control services;
  - b. Development and maintenance of interagency training and technical assistance in the provision of cancer control services;
  - c. Program monitoring and data collection;
  - d. Statewide evaluation of locally based cancer control programs;
  - e. Coordination of funding sources for cancer control programs; and
  - f. Procedures for awarding grants to local agencies providing cancer control services.

(b) The Committee shall submit a written report not later than May 1, 1994, and not later than October 1 of each subsequent year, to the Governor and to the Joint Legislative Commission on Governmental Operations. The report shall address the progress in implementation of a cancer control program. The report shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended programs. (1993, c. 321, s. 288.)

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

CASE NOTES

County Health Departments Immune from Suit. — Local health departments are agents of the state. Therefore, county Health Department was immune from suit under the doctrine of governmental immunity. EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", and for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing". Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444;

1911, c. 62, s. 9; C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1; 1989, c. 577, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 10; 1993 (Reg. Sess., 1994), c. 670, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, in subsection (g), in the second sentence, substituted "for services performed" for "and services performed" and added at the end "and for services performed pursuant to Part 11, Article 8 of this Chapter, 'Tattooing'".

§ 130A-40. Appointment of local health director.

CASE NOTES

Director Was a Public Officer for Purposes of Suit. — The Director of the Transylvania County Health Department, was a public officer and was liable in civil suit only upon a showing of malice. EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-41. Powers and duties of local health director.

CASE NOTES

Director Was a Public Officer for Purposes of Suit. — The Director of the Transylvania County Health Department, was a public officer and was liable in civil suit only upon a showing of malice. EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

Part 2. Sanitary Districts.

§ 130A-47. Creation by Commission.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.12 provides: "The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines:

"(1) that are located within the existing State highway right-of-way;

"(2) that are necessary to be relocated for State highway improvement projects let after July 1, 1993; and

"(3) that are owned by a sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 130A-50. Election and terms of office of sanitary district boards.

(a) The Department shall send a copy of the resolution creating the sanitary district to the county board or boards of county commissioners of the county or counties in which all or part of the district is located. The board or boards of commissioners shall hold a meeting or joint meeting for the purpose of electing the members of the sanitary district board.

(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

If the sanitary district board consists of three members, the county commissioners may at any time increase the sanitary district board to five members. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion to five members. The effective date of the expansion is the organizational meeting of the sanitary district board after the election.

The county commissioners may provide for staggering terms of an existing sanitary district board whose members serve two-year terms by providing for some of the members to be elected at the next election to be for four-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The county commissioners may provide for changing a sanitary district board from two-year terms to unstaggered four-year terms. This may be done either by providing that at the next election, all members shall be elected for four-year terms, or by extending the terms of existing members from two years to four years. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the change of length of terms.

(b1) If a sanitary district:

1. Does not share territory with any city as defined by G.S. 160A-1(2), and
2. The sanitary district is in more than one county,

the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163-1 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can been [be] held and successors qualified.

(b2) If a sanitary district:

(1) Is located entirely within a county which has no incorporated city as defined by G.S. 160A-1(2) located within that county; and

(2) Has a sanitary district board whose members serve four-year terms which are not staggered and which next expire in 1991,

the board of commissioners of that county may, by resolution adopted prior to December 31, 1989, set the sanitary district election to be held on the same date as general elections in even-numbered years under G.S. 163-1. Such resolution shall extend the terms of office of the then serving members of the sanitary district board by one year, so that they will expire on the first Monday in December following the 1992 general election. Other than as provided by this subsection, sanitary district elections shall continue to be conducted in accordance with this Article and Chapter 163 of the General Statutes.

(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163-292 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes. If the district is in more than one county, then the county board of elections of the county including the largest part of the district shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties.

(d) The board of elections shall certify the results of the election to the clerk of superior court. The clerk of superior court shall take and file the oaths of office of the board members elected.

(e) The elected members of the board shall take the oath of office on the first Monday in December following their election and shall serve for the term elected and until their successors are elected and qualified. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1; 1983, c. 891, s. 2; 1987, c. 22, s. 1; 1989, c. 310; 1993 (Reg. Sess., 1994), c. 736, s. 1.1.)

Editor's Note. — The bracketed word "be" in subdivision (b1) has been inserted to reflect the language apparently intended.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 12, 1994, added the last three paragraphs of subsection (b).

§ 130A-55. Corporate powers.

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

(1) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection, treatment or disposal facilities or systems; water supply systems; water purification or treatment plants and other utilities necessary for the preservation and promotion of the public

health and sanitary welfare within the district. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

(2) To acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems; water purification or treatment plants and other utilities, within and outside the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district, within reasonable limitation. The utilities shall be constructed, operated and maintained in accordance with applicable statutes and rules.

a. The authority granted to a sanitary district by the provisions of this subsection is supplemental to the authority granted to a sanitary district by other provisions of law.

b. Actions taken by a sanitary district to acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types; water supply systems; water purification or treatment plants and other utilities within and outside the corporate limits to provide service outside the corporate limits are approved and validated.

c. This subsection shall apply only in counties with a population of 70,000 or greater, as determined by the most recent decennial federal census.

(3) To levy taxes on property within the district in order to carry out the powers and duties conferred and imposed on the district by law, and to pay the principal of and interest on bonds and notes of the district.

(4) To acquire either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

(5) To employ and compensate engineers, counsel and other persons as may be necessary to carry out projects.

(6) To negotiate and enter into agreements with the owners of existing water supplies, sewage systems or other utilities as may be necessary to carry out the intent of this Part.

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Health Services, Environmental Management Commission, or the local board of health having jurisdiction over the area.

(8)a. To contract with any person within or outside the corporate limits of the district to supply raw water without charge to the person in return for an agreement to allow the district to discharge sewage in the person's previous water supply. The district may so contract and construct at its expense all improvements necessary or convenient for the delivery of the water when, in the opinion of the sanitary district board and the Department, it will be for the best of the district.

b. To contract with any person within or outside the corporate limits of the district to supply raw or filtered water and sewer service to the person where the service is available. For service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall not be liable for damages for failure to furnish a sufficient supply of water and adequate sewer service.

c. To contract with any person within or outside the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by that person.

(9) After adoption of a plan as provided in G.S. 130A-60, the sanitary district board may, in its discretion, alter or modify the plan if the Department determines that the alteration or modification does not constitute a material deviation from the objective of the plan and is in the public health interest of the district. The alteration or modification must be approved by the Department. The sanitary district board may appropriate or reappropriate money of the district for carrying out the altered or modified plan.

(10) To take action, subject to the approval of the Department, for the prevention and eradication of diseases transmissible by vectors by instituting programs for the eradication of the mosquito.

(11) To collect and dispose of garbage, waste and other refuse by contract or otherwise.

(12) To establish a fire department, or to contract for firefighting apparatus and personnel for the protection of life and property within the district.

(13) To provide or contract for rescue service, ambulance service, rescue squad or other emergency medical services for use in the district. The sanitary district shall be subject to G.S. 153A-250.

(14) To have privileges and immunities granted to other governmental units in exercise of the governmental functions.

(15) To use the income of the district, and if necessary, to levy and collect taxes upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection and rescue services in the district. Taxes shall be levied and collected at the same time and in the same manner as taxes for debt service as provided in G.S. 130A-62.

(16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:

a. To require any person owning, occupying or controlling improved real property within the district to connect with either or both the water or sewage systems of the district when the local health director, having jurisdiction over the property, determines that the health of the people residing within the district will be endangered by a failure to connect.

b. To require any person owning, occupying or controlling improved real property within the district where the water or sewage systems of the district are not immediately available or it is impractical with the systems, to install sanitary toilets, septic tanks and other health equipment or installations in accordance with applicable statutes and rules.

c. To order a person to abate a public health nuisance of the district. If the person being ordered to abate the nuisance refuses to comply with the order, the sanitary district board may institute an action in the superior court of the county where the public health nuisance exists to enforce the order.

d. To abolish or regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless the 500 feet is within the corporate limits of a city or town.

e. **(Effective October 1, 1994 — See editor's note)** Upon the noncompliance by a person of a rule adopted by the sanitary district board, the board shall notify the person of the rule being violated and the facts constituting the violation. The person shall have a reasonable time to comply with the rule as determined by the local health director of the person's residence. Upon failure to comply within the specified time or within a time extended by the sanitary district board, the person shall be guilty of a Class 1 misdemeanor.

f. The sanitary district board is authorized to enforce the rules adopted pursuant to this Part by criminal action or civil action, including injunctive relief.

(17) For the purpose of promoting and protecting the public health, safety and the general welfare of the State, a sanitary district board is authorized to establish as zoning units any portions of the sanitary district not under the control of the United States or this State or any agency or instrumentality of either, in accordance with the following:

a. No sanitary district board shall designate an area a zoning area until a petition signed by two-thirds of the qualified voters in the area, as shown by the registration books used in the last general election, and with a petition signed by two-thirds of the owners of real property in the area, as shown by the records in the office of the register of deeds for the county, is filed with the sanitary district board. The petition must be accompanied by a map of the proposed zoning area. The board shall hold a public hearing to obtain comment on the proposed creation of the zoning area. A notice of public hearing must be published in a newspaper of general circulation in the county at least two times, and a copy of the notice shall be posted at the county courthouse and in three other public places in the sanitary district.

b. When a zoning area is established within a sanitary district, the sanitary district board as to the zoning area shall have all rights, privileges, powers and duties granted to municipal corporations under Part 3, Article 19, Chapter 160A of the General Statutes. However, the sanitary district board shall not be required to appoint any zoning commission or board of adjustment. If neither a zoning commission nor board of adjustment is appointed, the sanitary district board shall have all rights.

c. A sanitary district board may enter into an agreement with any city, town or sanitary district for the establishment of a joint zoning commission.

d. A sanitary district board is authorized to use the income of the district and levy and collect taxes upon the taxable property within the district necessary to carry out and enforce the rules and provisions of this subsection.

e. This subsection shall apply only to sanitary districts which adjoin and are contiguous to an incorporated city or town and are located within three miles or less of the boundaries of two other cities or towns.

(18) To negotiate for and acquire by contract any distribution system located outside the district when the water for the distribution system is furnished by the district. If the distribution system is acquired by a district, the district may continue the operation of the system even though it remains outside the district.

(19) To accept gifts of real and personal property for the purpose of operating a nonprofit cemetery; to own, operate and maintain cemeteries with the donated property; and to establish perpetual care funds for the cemeteries in the manner provided by G.S. 160A-347.

(20) To dispose of real or personal property belonging to the district according to the procedures prescribed in Article 12 of Chapter 160A of the General Statutes. For purposes of this subsection, references in Article 12 of Chapter 160A to the "city," the "council," or a specific city official refer, respectively, to the sanitary district, the sanitary district board, and the sanitary district official who most nearly performs the same duties performed by the specified city official. For purposes of this subsection, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more sanitary district officials designated by the sanitary district board.

(21) To acquire, renovate property for or construct a medical clinic to serve the district, and to maintain real and personal property for a medical clinic to serve the district.

(22) To make special assessments against benefitted property within the corporate limits of the sanitary district and within the area served or to be served by the sanitary district for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Article 9 of Chapter 153A of the General Statutes, except that the language appearing in G.S.

153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by sanitary districts. For the purposes of this paragraph, references in Article 9 of Chapter 153A of the General Statutes, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer respectively to the sanitary district and to the official or employee of the sanitary district who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the officer designated by the sanitary district to perform the functions described in said sections of the statute. This subdivision applies only to sanitary districts with a population of 15,000 or over. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; cc. 1130, 1145; 1951, c. 17, s. 1; c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232; 1965, c. 496, s. 1; 1967, c. 632; c. 637, s. 1; c. 798, s. 2; 1969, cc. 478, 700, 944; 1971, c. 780, s. 29; 1973, c. 476, s. 128; 1979, c. 520, s. 2; c. 619, s. 7; 1981, cc. 629, 655; c. 820, ss. 1-3; c. 898, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1237; 1983, c. 891, s. 2; c. 925, s. 2; 1993, c. 539, s. 948; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — Columbus: 1993, c. 266, s. 1 (Riegelwood Sanitary District therein).

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subdivision (16)e.

§ 130A-65. (Effective October 1, 1994 — See editor's note) Liens for sewer service charges in sanitary districts not operating water distribution system; collection of charges; disconnection of sewer lines.

In sanitary districts which maintain and operate a sewage system but do not maintain and operate a water distribution system, the charges made for sewer service or for use of sewer service facilities shall be a lien upon the property served. If the charges are not paid within 15 days after they become due and payable, suit may be brought in the name of the sanitary district in the county in which the property served is located, or the property, subject to the lien, may be sold by the sanitary district under the same rules, rights of redemption and savings as are prescribed by law for the sale of land for unpaid ad valorem taxes. A sanitary district is authorized to adopt rules for the use of sewage works and the collection of charges. A sanitary district is authorized in accordance with its rules to enter upon the premises of any person using the sewage works and failing to pay the charges, and to disconnect the sewer line of that person from the district sewer line or disposal plant. A person who connects or reconnects with district sewer line or disposal plant without a permit from the sanitary district shall be guilty of a Class 1 misdemeanor. (1965, c. 920, s. 1; 1983, c. 891, s. 2; 1993, c. 539, s. 949; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the last sentence.

ARTICLE 4.

Vital Statistics.

§ 130A-92. Duties of the State Registrar.

(a) The State Registrar shall secure and maintain all vital records required under this Article and shall do all things necessary to carry out its provisions. The State Registrar shall:

(1) Examine vital records received from local registrars to determine if these records are complete and satisfactory, and require the provision of information necessary to make the records complete and satisfactory;

(2) Permanently preserve the information from the vital records in a systematic manner in adequate fireproof space which shall be provided in a State building by the Department of Administration, and maintain a comprehensive and continuous index of all vital records;

(3) Prepare and supply or approve all forms used in carrying out the provisions of this Article;

(4) Appoint local registrars as required by G.S. 130A-95 and exercise supervisory authority over local registrars, deputy local registrars and sub-registrars;

(5) Enforce the provisions of this Article, investigate cases of irregularity or violations and report violations to law-enforcement officials for prosecution under G.S. 130A-26;

(6) Conduct studies and research and recommend to the General Assembly any additional legislation necessary to carry out the purposes of this Article; and

(7) Adopt rules necessary to carry out the provisions of this Article.

(b) The State Registrar may retain payments made in excess of the fees established by this Article if the overpayment is in the amount of three dollars ($3.00) or less and the payor does not request a refund of the overpayment. The State Registrar is not required to notify the payor of any overpayment of three dollars ($3.00) or less. (1913, c. 109, s. 1; C.S., s. 7086; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1971, c. 444, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 366; 1993, c. 146, s. 2.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, in subdivision (a)(2), inserted "information from the"; and in subdivision (a)(3), inserted "or approve" and deleted "which shall be the only forms used to file vital records in this State" from the end.

§ 130A-93. Access to vital records; copies.

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) The State Registrar shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and (g), to any person upon request.

(c) The State Registrar shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and (g), only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, child, parent, brother or sister;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-29.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for research purposes. The State Registrar shall adopt rules providing for the use of this information for research purposes.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar.

These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. 130A-93.1.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules. (1983, c. 891, s. 2; 1985, c. 325, s. 1; 1991, c. 343, s. 1; 1993, c. 146, s. 3.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, in subsection (a), added "and to indices to the original vital records" at the end of the first sentence and added the second sentence.

§ 130A-101. Birth registration.

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar. The physician or other person in attendance shall provide the medical information required by the certificate and shall certify the facts of birth within 10 days after the birth. If the physician or other person in attendance does not certify the facts of birth within the ten-day period, the person in charge of the facility may complete and sign the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;
(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;
(3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;
(2) A sworn statement by the father declaring that he believes he is the natural father of the child;
(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the child. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C.S., s. 7010; 1957, c. 1357, s. 1; 1969, c. 1031, s. 1; 1979, c. 95, s. 4; c. 417; 1983, c. 891, s. 2; 1989, c. 199, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 1004, s. 6; 1993, c. 333, s. 1.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, rewrote subsection (f).

ARTICLE 5.

Maternal and Child Health.

Part 1. In General.

§ 130A-124. Department to establish maternal and child health program.

(a) The Department shall establish and administer a maternal and child health program for the delivery of preventive, diagnostic, therapeutic and habilitative health services to women of childbearing years, children and other persons who require these services. The program may include, but shall not be limited to, providing professional education and consultation, community coordination and direct care and counseling.

(b) The Commission shall adopt rules necessary to implement the program.

(c) Prior year refunds received by the Children's Special Health Services Program that are not encumbered or spent during a fiscal year shall not revert to the General Fund but shall remain in the Department for purchase of care and contracts in the Program. Funds appropriated for the purchase of care and contracts in the Program that are encumbered and not spent during a fiscal year shall not revert to the General Fund but shall remain in the Department for the purchase of care and contracts in the Program. (1983, c. 891, s. 2; 1993, c. 321, s. 275(a).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.9 (a) to (f) establishes the Women's Health Service Fund within the Department of Environment, Health, and Natural Resources; provides that the Department may make reimbursements from the Fund to approved medical providers for services rendered to eligible women who voluntarily request a long-term, reversible contraceptive drug or device; provides for the adoption of rules for the administration of and allocations from the Fund; prohibits coercion; and appropriates $750,000 to this Fund.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective June 30, 1993, added subsection (c).

Part 5. Disposition of Remains of Terminated Pregnancies.

§§ 130A-131.11 through 130A-131.14: Reserved for future codification purposes.

Part 6. Adolescent Pregnancy Prevention Projects.

§ 130A-131.15. Department to establish program.

(a) The Department shall establish and administer a program to distribute funds appropriated for adolescent pregnancy prevention projects.

(b) The Commission shall adopt rules necessary to implement the program.

(c) The Department shall evaluate all of the adolescent pregnancy [prevention] projects funded as a result of this program at least yearly and shall report its findings to the Commission for Health Services, the Joint Legislative Commission on Governmental Operations, and the Chairmen of the House Appropriations Subcommittee on Natural and Economic Resources, and the Senate Appropriations Committee on Natural and Economic Resources by April 1 of each year. The evaluation shall be conducted by a firm or individual external to the Department. Any evaluation of these projects shall include a study of the effectiveness of the project in reducing the pregnancy rate within the target population.

(d) The Commission shall be responsible for monitoring the Department's administration of the Adolescent Pregnancy Prevention Program. The Department shall manage and fund the Adolescent Pregnancy Prevention Program projects as follows:

(1) Applications. Any local agency or organization or combination of agencies and organizations may apply to the Department for an allocation of money to operate a project aimed at preventing adolescent pregnancy. The application shall contain an analysis of the adolescent pregnancy and related problems in the locality the project would serve, and a description of how the project would attempt, over a period of at least five years, to prevent the problems. The application shall state how much money is needed to operate the project and how the money shall be spent. The Department shall conduct annually a proposal-writing session that shall be attended by a representative of any project that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Department requires of projects. That session shall also provide information about additional funding sources to which projects might turn to satisfy the matching requirements of subdivision (5) of this subsection.

(2) Proposal Requirements. The Department shall apply the following minimum standards to projects applying for first-year funding:

  a. Each project shall have a plan of action that extends for at least five years for prevention of adolescent pregnancy.

  b. Each project shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.

  c. Each project, before submitting its proposal, shall send a representative to the proposal-writing session held by the Department.

(3) Operating Standards. The Department shall apply the following minimum operating standards:

- a. Each project shall have a Board of Advisors composed of members from outside the sponsoring agency of the project. The Board of Advisors shall include representatives from at least four of the following: media, government, charitable organizations, private business, and medical institutions. The Boards of Advisors shall meet at least quarterly and advise project staff on project policies and operations.
- b. Each project shall comply with reporting, contracting, and evaluation requirements of the Department.
- c. Each project shall define and maintain cooperative ties with other community institutions.
- d. Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.

(4) Criteria for Project Selection. For first-year funding, the Department shall choose from among the applicants that meet the minimum standards in subdivision (2) of this subsection the best selection of projects according to the following criteria:

- a. Adequacy of proposed staff to meet project objectives;
- b. Appropriateness of project strategies to reduce adolescent pregnancy;
- c. Level of community support, including endorsement from the appropriate local government entity and documentation from the appropriate local government entity and from community organizations that opportunity has been given for citizen input into the proposed program, and that there is community support for the proposal. Documentation may include letters or statements of support from citizens or community organizations, or statements that community support was expressed at public hearings. A public hearing is not required by this paragraph;
- d. Degree of need of the locality, including that the county has a significant adolescent pregnancy problem as evidenced by its attributable risk score developed by the State Center for Health and Environmental Statistics; and
- e. Other appropriate criteria.

The Department shall make its recommendations for funding to the Commission. The Commission shall make the final determination of which projects are to be funded. The Commission shall consider the recommendations of the Department but shall not be bound by them. The Commission shall notify the projects that are to be funded by June 1 of each year.

(5) Schedule of Funding. If the Commission, upon consultation with the Department, finds that a project it has chosen for first-year funding continues to meet the operating standards of subdivisions (2) and (3) of this subsection, funding for that project shall continue, to the extent of available money, for an additional four years. The level of funding provided by the Department to approved projects shall be set according to the following schedule:

a. First year, eighty percent (80%) of the project's annual budget not to exceed the maximum award established by the Commission for Health Services;
b. Second year, ninety percent (90%) of the State appropriations or federal block grant funds awarded in the first year;
c. Third year, seventy-five percent (75%) of the State appropriations or federal block grant funds awarded in the first year;
d. Fourth year, sixty-five percent (65%) of the State appropriations or federal block grant funds awarded in the first year; and
e. Fifth year, fifty percent (50%) of the State appropriations or federal block grant funds awarded in the first year.

The portion of a project's budget that must come from sources other than State or federal block grant funds may be provided as in-kind contributions as well as cash.

(6) Five-Year Limit on Funding. No project shall receive State funding if it has previously received State funding for five full years. Any project that has received State funding before July 1, 1990, will be eligible for consideration for an additional five years' State support, according to the schedule. The Commission may fund any such project that meets the minimum standards if it determines, after considering the experience and impact of the project and measuring its application against those of other applicants, that it should be funded.

(7) Maximum Level of Funding. The Commission for Health Services shall by rule determine the maximum annual amount that may be made to any one project.

(8) As adolescent pregnancy prevention project grant funds decrease, a project shall maintain its original budget level, less the amount expended for start-up costs. The Department shall develop guidelines for determining start-up costs, which guidelines shall be uniform for all projects. Local match percentage may come from any in-kind source or newly generated funds, public or private, available to the project. (1993, c. 321, s. 276.)

Editor's Note. — Session Laws 1993, c. 321, s. 323 made this Part effective July 1, 1993.

The word "prevention" in brackets in the first sentence of subsection (c) was inserted at the direction of the Revisor of Statutes.

Session Laws 1993, c. 321, s. 322 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.10(a) to (c) provides that of funds appropriated to the Department of Environment, Health, and Natural Resources in 1993 for health programs, up to $100,000 may be used to initate a statewide media compaign, in conjunction with the North Carolina Coalition on Adolescent Pregnancy, for the purpose of promoting abstinence, reducing pregnancy, and promoting healthy behavior in children ages 9 to 14, and to fund a sex education curriculum that promotes abstinence until marriage. The Department is to report to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources by January 15, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

§§ 130A-131.16 through 130A-132: Reserved for future codification purposes.

ARTICLE 6.

Communicable Diseases.

Part 1. In General.

§ 130A-143. Confidentiality of records.

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

Part 2. Immunization.

§ 130A-152. Immunization required.

(a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

(b) A child who has been immunized for measles prior to attaining 12 months of age shall be required to obtain a second measles immunization after the child has attained 12 months of age in order to satisfy the requirement of subsection (a).

(c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:

(1) The child's age at administration of each vaccine;
(2) The number of doses of each vaccine;
(3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
(4) The procedures and practices for administering the vaccine; and
(5) Redistribution of vaccines provided to local health departments.

(c1) The Commission for Health Services shall, pursuant to G.S. 130A-152 and G.S. 130A-433, adopt rules establishing reasonable fees for the administration of vaccines and rules limiting the requirements that can be placed on children, their parents, guardians, or custodians as a condition for receiving vaccines provided by the State. These rules shall become effective January 1, 1994.

(d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.

(e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement. (1957, c. 1357, s. 1; 1971, c. 191; 1973, c. 476, s. 128; c. 632, s. 1; 1975, c. 84; 1977, c. 160; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 158; 1993, c. 321, s. 281(a).)

Editor's Note. — Session Laws 1993, c. 321, s. 281(a) was codified as subsection (c1) of this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 321, s. 2 provides: "This act shall be known as the Current Operation Appropriations Act of 1993."

Session Laws 1993, c. 561, s. 109, provides: "(a) Of the funds appropriated in Chapter 321 of the 1993 Session Laws from the General Fund to the Department of Environment, Health, and Natural Resources for the 1993-94 fiscal year for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of up to one million dollars ($1,000,000) may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

"(1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units; and

"(2) Continued development of an automated immunization registry.

"(b) Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in the Department of Environment, Health, and Natural Resources.

"(c) The Department of Environment, Health, and Natural Resources shall not obligate or expend funds authorized for the purposes stated in subsection (a) of this section until the Department has prepared and submitted for review to the Joint Legislative Commission on Governmental Operations the eight-year plan for implementation of the statewide immunization program required under Section 287 of Chapter 321 of the 1993 Session Laws. In addition to the requirements of Section 287 of Chapter 321 of the 1993 Session Laws, the eight-year plan shall address planned expenditures and immunization projects and activities identified under subsection (a) of this section."

Session Laws 1993, c 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 1, 1993 added subsection (c1).

§ 130A-153. Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors.

(a) The required immunization may be obtained from a physician licensed to practice medicine or from a local health department. Local health departments shall administer the required immunizations at no cost to the patient. The Department shall provide the vaccines for use by the local health departments. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state each patient's age and the number of doses of each type of vaccine administered.

(c) Immunization certificates and information concerning immunizations contained in medical or other records shall, upon request, be shared with the Department, local health departments, and the patient's attending physician. In addition, an insurance institution, agent, or insurance support organization, as those terms are defined in G.S. 58-39-15, may share immunization information with the Department. The Commission may, for the purpose of assisting the Department in enforcing this Part, provide by rule that other persons may have access to immunization information, in whole or in part.

(d) A physician or local health department may immunize a minor with the consent of a parent, guardian, or person standing *in loco parentis* to the minor. A physician or local health department may also immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing *in loco parentis* to the minor to obtain the immunization for the minor. (1957, c. 1357, s. 1; 1959, c. 177; 1965, c. 652; 1971, c. 191; 1973, c. 476, s. 128; 1979, c. 56, s. 1; 1983, c. 891, s. 2; 1985, c. 743, ss. 1, 2; 1993, c. 134, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 8, 1993, rewrote the catchline and added subsections (c) and (d).

Part 6. Rabies.

§ 130A-189. Rabies vaccination certificates.

A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall complete a three-copy rabies vaccination certificate. The original rabies vaccination certificate shall be given to the owner of each dog or cat that receives rabies vaccine. One copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. The other copy shall be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352; 1983, c. 891, s. 2; 1993, c. 245, s. 1.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, added at the end "provided the information given to the county agency shall not be used for commercial purposes."

§ 130A-196. (Effective October 1, 1994 — See editor's note) Confinement of all biting dogs and cats; notice to local health director; reports by physicians; certain dogs exempt.

When a person has been bitten by a dog or cat, the person or parent, guardian or person standing *in loco parentis* of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. All dogs and cats that bite a person shall be immediately confined for 10 days in a place designated by the local health director. However, the local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine his animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses a dog or cat that has bitten a person refuses to confine the animal as required by this section, the local health director may order seizure of the animal and its confinement for 10 days at the expense of the owner. A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the local health director the name, age and sex of that person. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9; 1977, c. 628; 1983, c. 891, s. 2; 1985, c. 674; 1989, c. 298; 1993, c. 539, s. 950; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and shall be punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for six months, or both" in the fifth sentence.

ARTICLE 8.

Sanitation.

Part 4. Institutions and Schools.

§ 130A-236. Regulation of sanitation in schools.

For the protection of the public health, the Commission shall adopt rules to establish sanitation requirements for public, private and religious schools. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces and other areas; adequacy of lighting, ventilation, water supply, toilet and lavatory facilities; sewage collection, treatment and disposal facilities; and solid waste disposal. The Department shall inspect schools at least annually. The Department shall submit written inspection reports of public schools to the State Board of Education and written inspection reports of private and religious schools to the Department of Administration. (1973, c. 1239, s. 1; 1983, c. 891, s. 2; 1993, c. 522, s. 11.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in the last sentence substituted "State Board of Education" for "Department of Public Education".

§ 130A-237. Corrective action.

A principal or administrative head of a public, private, or religious school shall immediately take action to correct conditions that do not satisfy the sanitation rules. (1973, c. 1239, s. 2; 1983, c. 891, s. 2; 1993, c. 262, s. 6.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, deleted "Inspections, reports" from the section catchline and rewrote this section.

Part 6. Regulation of Food and Lodging Facilities.

§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

(1) "Establishment" means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, or (iv) a bed and breakfast inn.

(1a) "Permanent house guest" means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.

(2) "Private club" means an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1).

(3) "Regular boarder" means a person who receives food for periods of a week or longer.

(4) "Establishment that prepares or serves drink" means a business or other entity that puts together, portions, sets out, or hands out drinks in unpackaged portions using containers that are reused on the premises rather than single-service containers.

(5) "Establishment that prepares or serves food" means a business or other entity that cooks, puts together, portions, sets out, or hands out food in unpackaged portions for human consumption.

(6) "Bed and breakfast inn" means a business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but not more than 23 persons per night for a period of less than one week, and that:
  a. Does not serve food or drink to the general public for pay;
  b. Serves only the breakfast meal, and that meal is served only to overnight guests of the business;
  c. Includes the price of breakfast in the room rate; and
  d. Is the permanent residence of the owner or the manager of the business. (1983, c. 891, s. 2; 1987, c. 367; 1991, c. 733, s. 1; 1993, c. 262, s. 1; c. 513, s. 12.)

Effect of Amendments. — Session Laws 1993, c. 262, s. 1, effective July 1, 1993, added present subdivision (1); redesignated former subdivision (1) as present subdivision (1a); in subdivision (2) substituted "that" for "which" and substituted "either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1)"; and rewrote subdivisions (4) and (5).

Session Laws 1993, c. 513, s. 12, effective July 24, 1993, in this section as amended by Session Laws 1993, c. 262, s. 1 rewrote subdivision (1); in subdivision (2) substituted "organization" for "establishment"; in subdivision (6) deleted "establishment" following "business"; and in subdivisions (6)b and (6)d substituted "business" for "establishment."

§ 130A-248. Regulation of restaurants and hotels.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of restaurants, school cafeterias, summer camps, food or drink stands, mobile food units, pushcarts, and other establishments that prepare or serve food or drink for pay. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or fewer persons per night, and rules governing the sanitation of bed and breakfast inns as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast inns.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;

(2) The adequacy of:
  a. Lighting and water supply;
  b. Wastewater collection, treatment, and disposal facilities; and
  c. Lavatories, food protection, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees;

(6) Animal and vermin control; and

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C.

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(b1) A permit shall expire one year after an establishment closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B of the General Statutes.

(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for an establishment, any previously issued permit for an establishment in that location becomes void.

(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A pushcart or mobile food unit shall be operated in conjunction with a permitted restaurant.

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human Resources and public school cafeterias, an annual fee of twenty-five dollars ($25.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local public health programs and activities. No more than thirty-three and one-third percent (33-1/3%) of the fees collected may be used to support State health programs and activities. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 438, s. 2; 1989, c. 551, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1064, s. 1; 1991, c. 226, s. 1; c. 656, ss. 1, 2; c. 733, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 7; 1993, c. 262, s. 2; c. 346, s. 1; c. 513, s. 13.)

Effect of Amendments. — Session Laws 1993, c. 262, s. 2, effective July 1, 1993, substituted "establishment" for "facility" and "establishments" for "facilities" throughout the section; in subsection (a), in the first sentence deleted "sandwich manufacturing operations" following "drink stands", substituted "establishments that prepare or serve food or drink" for "facilities where food or drink is prepared or served", in the second sentence substituted "establishment that prepares or serves food or drink" for "facility where food or drink is prepared or served", substituted "as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000" for "meets the definition of an establishment pursuant to G.S. 18B-1000(2), (4), (5), or (6)" following "holds an ABC permit"; in subsection (a1) substituted "establishments that provide lodging" for "facilities where lodging is provided"; in subsection (a2) substituted "fewer" for "less"; in subdivision (a3)(1) substituted "Sanitation" for "Establishment of sanitation" and inserted "ventilation equipment" following "utensils"; in subdivision (a3)(2)a. deleted "ventilation" following "Lighting"; in subdivision (a3)(2)b. substituted "Wastewater" for "Sewage"; in subdivision (a3)(2)c. substituted "Lavatories" for "Lavatory facilities" and deleted "facilities" following "food protection"; in subsection (b) added the present third and fourth sentences; in subsection (b1) inserted "of the General Statutes" at the end; in subsection (c), in the first sentence, inserted "or the establishment is leased" following "transferred" and, in the first and second sentences, substituted "lessee" for "operator", in the third sentence, inserted "or lease" following "ownership" and added the present fourth sentence; and added subsection (c1).

Session Laws 1993, c. 513, s. 13, effective July 24, 1993, in the second sentence of subsection (a) as amended by Session Laws 1993, c. 262, s. 13, inserted "that prepares or serves food or drink" following "establishment", and made other, stylistic changes.

Session Laws 1993, c. 346, s. 1, effective January 1, 1994, deleted "and" from the end of subdivision (a3)(5), added "and" at the end of subdivision (a3)(6) and added subdivision (a3)(7).

§ 130A-249. Inspections; report and grade card.

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each restaurant at least quarterly, except that the quarterly inspection requirement shall not apply to temporary food establishments. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall have a grade card posted where it may be readily visible upon entering the establishment and one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary. (1941, c. 309, s. 2; 1955, c. 1030, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 145; c. 189; 1989, c. 551, s. 2; 1993, c. 262, s. 3.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, substituted "establishment" for "facility" and "establishments" for "facilities" throughout the section.

§ 130A-250. Exemptions.

The following shall be exempt from this Part:

(1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units;
(2) Condominiums;
(3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only;
(4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns;
(5) Private clubs;

(6) Curb markets operated by the State Agricultural Extension Service;
(7) Establishments that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days; and
(8) Establishments that put together, portion, set out, or hand out only drinks using single service containers that are not reused on the premises. (1955, c. 1030, s. 4; 1957, c. 1214, s. 3; 1983, c. 884, ss. 1, 2; c. 891, s. 2; 1985 (Reg. Sess., 1986), c. 926; 1989, c. 551, s. 3; 1991, c. 733, s. 3; 1993, c. 262, s. 4; c. 513, s. 14.)

Effect of Amendments. —
Session Laws 1993, c. 262, s. 4, effective July 1, 1993, rewrote this section.

Session Laws 1993, c. 513, s. 14, effective July 24, 1993, in this section as amended by Session Laws 1993, c. 262, s. 4, in subdivision (1) substituted "Establishments that provide lodging" for "Lodging establishments."

Part 8. Bedding.

§ 130A-261. Definitions.

The following definitions shall apply throughout this Part:
(1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used for reclining or sleeping. This definition includes dual purpose furniture such as studio couches and sofa beds. The term "mattress" does not include water bed liners, bladders or cylinders unless they contain padding or stuffing. The term "mattress" also does not include quilts and comforters made principally by hand sewing or stitching in a home or community workshop.
(2) "Itinerant vendor" means a person who sells bedding from a movable conveyance.
(3) "Manufacture" means the making of bedding out of new materials.
(4) "New material" means any material or article that has not been used for any other purpose and by-products of industry that have not been in human use.
(5) "Previously used material" means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
(6) "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
(7) "Sanitize" means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.
(8) "Secondhand bedding" means any bedding of which prior use has been made.
(9) "Sell" or "sold" means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale. (1937, c. 298,

s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2; 1987, c. 456, s. 1; 1991, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 647, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, in subdivision (1) added the last sentence.

Part 10. Public Swimming Pools.

§ 130A-282. Commission to adopt rules; exception.

(a) Rules Required. For protection of the public health and safety, the Commission shall adopt and the Department shall enforce rules concerning the construction and operation of public swimming pools. The Commission shall classify public swimming pools on the basis of size, usage, type, or any other appropriate factor and shall adopt requirements for each classification. The rules shall include requirements for:

(1) Submission and review of plans prior to construction.
(2) Application, review, expiration, renewal, and revocation or suspension of an operating permit.
(3) Inspection.
(4) Design and construction including materials, depth and other dimensions, and standards for the abatement of suction hazards.
(5) Operation and safety including water source, water quality and testing, fencing, water treatment, chemical storage, toilet and bath facilities, measures to ensure the personal cleanliness of bathers, safety equipment and other safety measures, and sewage and other wastewater disposal.

(b) Exception. Public swimming pools constructed or remodeled prior to May 1, 1993, that do not meet specific design and construction requirements of the rules for public swimming pools adopted by the Commission shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. Public swimming pools constructed or remodeled prior to May 1, 1993, shall comply with all other rules for public swimming pools adopted by the Commission.

(c) No single drain, single suction outlet public swimming pools less than 18 inches deep shall be allowed to operate. (1989, c. 577, s. 1; 1993, c. 215, s. 1; 1993 (Reg. Sess., 1994), c. 732, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 732, which amended this section, in s. 3 provides: "The Commission for Health Services shall adopt whatever temporary rules it deems necessary to minimize the risk of suction-related injuries to children during the 1994 pool season."

Session Laws 1993 (Reg. Sess., 1994), c. 732, which amended this section, in s. 4 provides: "The Department of Environment, Health, and Natural Resources shall disseminate not later than 15 days after ratification of this act written information designed to adequately inform local health departments, public swimming pool operators, and the general public of the presence of and ways to avoid hazards related to the use and operation of public swimming pools. This information shall include easily understandable language relating to suction hazards in wading pools."

Effect of Amendments. — The 1993 amendment, effective June 24, 1993, substituted "rules; exception" for "rules" in the catchline; inserted "(a) Rules Required" at the beginning of that subsection, and added subsection (b).

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, except subsection (c) which becomes effective 30 days after ratification (the act was ratified July 11, 1994), rewrote subdivision (a)(4); added subdivision (a)(5); in the first sentence of subsection (b) deleted "the" preceding "design and construction," added "other than requirements related to the abatement of suction hazards"; and added subsection (c).

Part 11. Tattooing.

§ 130A-283. Tattooing regulated.

(a) Definition. — As used in this Part, the term "tattooing" means the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin through puncturing by use of a needle or any other method.

(b) Prohibited Practice. — No person shall engage in tattooing without first obtaining a tattooing permit from the Department. Licensed physicians, as well as physician assistants and nurse practitioners working under the supervision of a licensed physician, who perform tattooing within the normal course of their professional practice are exempt from the requirements of this Part.

(c) Application. — To obtain a tattooing permit, a person must apply to the Department. Upon receipt of the application, the Department, acting through the local health department, shall inspect the premises, instruments, utensils, equipment, and procedures of the applicant to determine whether the applicant meets the requirements for a tattooing permit set by the Commission. If the applicant meets these requirements, the Department shall issue a permit to the applicant. A permit is valid for one year and must be renewed annually by applying to the Department for a permit renewal.

(d) Violations. — The Department may deny an application for a tattooing permit if an applicant does not meet the requirements set by the Commission for the permit. The Department may suspend, revoke, or refuse to renew a permit if it finds that tattooing is being performed in violation of this Part. In accordance with G.S. 130A-24(a), Chapter 150B of the General Statutes, the Administrative Procedure Act, governs appeals concerning the enforcement of this Part.

(e) Limitation. — A permit issued pursuant to this Part does not authorize a person to remove a tattoo from the body of a human being. Compliance with this Part is not a bar to prosecution for a violation of G.S. 14-400. (1993 (Reg. Sess., 1994), c. 670, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 670, s. 4, made this section effective January 1, 1995.

§§ 130A-284 through 130A-289: Reserved for future codification purposes.

ARTICLE 9.

Solid Waste Management.

Part 1. Definitions.

§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) "CERCLA/SARA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1a) "Chemical or portable toilet" means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1b) "Chlorofluorocarbon refrigerant" means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) "Closure" means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(3) "Commercial" when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(4) "Construction" or "demolition" when used in connection with "waste" or "debris" means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(5) "Designated local government" means a unit of local government which holds a permit issued by the Department pursuant to G.S. 130A-291(b) to operate a solid waste management facility.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(9) "Hazardous waste facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(10) "Hazardous waste generation" means the act or process of producing hazardous waste.

(11) "Hazardous waste disposal facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) "Hazardous waste management program" means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(14) "Inert debris" means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) "Land-clearing debris" means solid waste which is generated solely from land-clearing activities.

(16) "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(17) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(18) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18a) "Municipal solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, or solid waste from mining or agricultural operations.

(18b) "Municipal solid waste management facility" means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) "Natural resources" means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) "Open dump" means a solid waste disposal site which is not a sanitary landfill.

(21) "Operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(22) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(23) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) "Recovered materials" means those materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse by separation, collection, or processing.

(25) "RCRA" means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) "Recycling" means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(28) "Refuse" means all nonputrescible waste.

(28a) "Refuse-derived fuel" means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) "Resource recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(30) "Reuse" means a process by which resources are reused or rendered usable.

(31) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(32) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Domestic treatment plant septage does not include ash generated during the firing of domestic treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or business in a treatment works where the designed disposal is subsurface. Industrial or commercial treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Industrial or commercial treatment plant septage does not include ash generated during the firing of industrial or commercial treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(33) "Septage management firm" means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans;

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;
2. Irrigation return flows; and
3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

(36) "Solid waste disposal site" means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) "Solid waste generation" means the act or process of producing solid waste.

(38) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport,

separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) "Solid waste management facility" means land, personnel and equipment used in the management of solid waste.

(40) "Special wastes" means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) "Tire-derived fuel" means a form of fuel derived from scrap tires.

(42) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) "Unit of local government" means a county, city, town or incorporated village.

(44) "White goods" includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(45) "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.24:

(1) "Public used oil collection center" means:
  a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and
  b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, sol-

vent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) "Used oil recycling facility" means any facility that recycles more than 10,000 gallons of used oil annually. (1969, c. 899; 1975, c. 311, s. 2; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 1; 1981, c. 704, s. 4; 1983, c. 795, ss. 1, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, s. 2; 1985, c. 738, s. 1; 1987, c. 574, s. 1; 1987 (Reg. Sess., 1988), c. 1020, s. 1; c. 1058, s. 1; 1989, c. 168, s. 11; c. 742, s. 5; c. 784, s. 1; 1991, c. 342, s. 7; c. 621, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 7; 1993, c. 173, ss. 1-3; c. 471, ss. 1, 2.)

Effect of Amendments. —

Session Laws 1993, c. 173, s. 1, effective July 1, 1993, added subdivision (1a) to subsection (a).

Session Laws 1993, c. 173, s. 2, effective July 1, 1993, in subdivision (a)(32) substituted "liquids," for "liquids" and substituted "wastewater" for "septic tank"; added the second sentence and added subdivisions (a)(32)a. through (a)(32)e.

Session Laws 1993, c. 173, s. 3, effective July 1, 1993, substituted "wastewater" for "sanitary sewage" in subdivision (a)(33).

Session Laws 1993, c. 471, effective January 1, 1994, in s. 1 added subdivision (a)(1b) and, in s. 2, in subdivision (a)(44), deleted "inoperative and discarded" preceding "refrigerators" and inserted "unit air conditioners, washing machines, dishwashers, clothes dryers" following "freezers".

CASE NOTES

Quoted in In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993).

Part 2. Solid and Hazardous Waste Management.

§ 130A-291.1. Septage management program.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but not be limited to, criteria for the sanitary management of septage, including standards for transportation, storage, treatment and disposal; issuance, suspension and revocation of permits; and procedures for payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission.

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) A septage management firm that operates one pumper truck shall pay an annual fee of three hundred dollars ($300.00) to the Department. A septage management firm that operates two or more pumper trucks shall pay an annual fee of four hundred dollars ($400.00) to the Department. The fee is due by January 1 of each year.

Fees collected under this subsection shall be applied only to the costs of the septage management program.

(f) All wastewater systems designed to discharge effluent to the surface waters may accept, treat and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the wastewater system. The wastewater system may charge a reasonable fee for acceptance, treatment, and disposal of septage. (1987 (Reg. Sess., 1988), c. 1058, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 8; 1993, c. 173, s. 4.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, rewrote subsection (d); in subsection (e) inserted, in the first sentence, "that operates one pumper truck" following "firm" and inserted "of three hundred dollars ($300.00)" following "fee", added the present second sentence, rewrote the present third sentence and, in the fourth sentence, substituted "Fees" for "All fees" and inserted "only" following "applied"; in subsection (f), in the first sentence, substituted "wastewater" for "public or community sanitary sewage" following "All" and substituted "wastewater" for "sanitary sewage" following "permit conditions of the" and, in the second sentence, substituted "wastewater" for "sanitary sewage" and "treatment," for "treatment".

§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances (including but not limited to those imposing taxes, fees, or charges or regulating health, environment, or land use), any local ordinance that prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility which the Secretary has preempted pursuant to subsections (b) through (f) of this section, shall be invalid to the extent necessary to effectuate the purposes of this Chapter or Chapter 130B of the General Statutes. To this end, all provisions of special, local, or private acts or resolutions are repealed which:

(1) Prohibit the transportation, treatment, storage, or disposal of hazardous waste within any county, city, or other political subdivision;

(2) Prohibit the siting of a hazardous waste facility within any county, city, or other political subdivision;

(3) Place any restriction or condition not placed by Article 9 of Chapter 130A or Chapter 130B of the General Statutes upon the transportation, treatment, storage, or disposal of hazardous waste, or upon the siting of a hazardous waste facility within any county, city, or other political subdivision; or

(4) In any manner are in conflict or inconsistent with the provisions of Article 9 of Chapter 130A or Chapter 130B of the General Statutes.

No special, local, or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of Article 9 of Chapter 130A or Chapter 130B of the General Statutes unless it expressly provides for such by specific references to the appropriate section of this Part. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility are invalidated to the extent preempted by the Secretary pursuant to this Section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the operator of the proposed facility or the North Carolina Hazardous Waste Management Commission established pursuant to Chapter 130B of the General Statutes (hereinafter "the Commission") may petition the Secretary to review the matter. After receipt of a petition, the Secretary shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Secretary, the Secretary shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Secretary. The Secretary shall give notice of the public hearing by:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and

(2) First class mail to persons who have requested such notice. The Secretary shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address which appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Any interested person may appear before the Secretary at the hearing to offer testimony. In addition to testimony before the Secretary, any interested person may submit written evidence to the Secretary for its consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(d) The Secretary shall determine whether or to what extent to preempt local ordinance(s) so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Secretary shall preempt a local ordinance only if it makes all five of the following findings:

(1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility;

(2) That the proposed facility is needed in order to establish adequate capability to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party and therefore serves the interests of the citizens of the State as a whole;

(3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);

(4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and

(5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator or the Commission has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable local ordinance(s).

If the Secretary does not make all five findings set out above, the Secretary shall not preempt the challenged local ordinance(s). The Secretary's decision shall be in writing and shall identify the evidence submitted to the Secretary plus any additional evidence used in arriving at the decision.

(e) The decision of the Secretary shall be final unless a party to the action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-29 and this section, files a written appeal within 30 days of the date of such decision. The record on appeal shall consist of all materials and information submitted to or considered by the Secretary, the Secretary's written decision, a complete transcript of the hearing, all written material presented to the Secretary regarding the location of the facility, the specific findings required by subsection (d) of this section, and any minority positions on the specific findings required by subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Secretary, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or

(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for such reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

(g) Repealed by Session Laws 1989, c. 168, s. 13. (1981, c. 704, s. 5; 1983, s. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 3-5; 1987, c. 827, s. 249; 1987 (Reg. Sess., 1988), c. 993, s. 28; c. 1082, s. 13; 1989, c. 168, s. 13; 1993, c. 501, s. 13.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, rewrote subsection (a); substituted "Secretary" for "Board" throughout the section; in subsection (c) substituted "Secretary, the Secretary" for "Board, the Board", substituted "Secretary. The Secretary" for "Board. The Board"; in subsection (d) substituted "Secretary's" for "Board's"; and in subsection (e) substituted "Secretary, the Secretary's" for "Board, the Board's."

§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a waste "recycling, reduction or resource recovering facility" or as waste "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4)a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit.

b. The issuance of permits for sanitary landfills operated by local governments is exempt from the environmental impact statements required by Article 1 of Chapter 113A of the General Statutes, entitled the North Carolina Environmental Policy Act of 1971. All sanitary landfill permits issued to local governments prior to July 1, 1984, are hereby validated notwithstanding any failure to provide environmental impact statements pursuant to the North Carolina Environmental Policy Act of 1971;

(4a) No permit shall be granted for any public or private sanitary landfill to receive solid non-radioactive waste generated outside the boundaries of North Carolina to be deposited, unless such waste has previously been inspected by the solid waste regulatory agency of that nation, state or territory, characterized in detail as to its contents and certified by that agency to be non-injurious to health and safety. The Commission shall adopt rules to implement this subsection.

(5) Repealed by Session Laws 1983, c. 795, s. 3.

(5a) Designate a geographic area within which the collection, transportation, storage and disposal of all solid waste generated within said area shall be accomplished in accordance with a solid waste management plan. Such designation may be made only after the Department has received a request from the unit or units of local government having jurisdiction within said geographic area that such designation be made and after receipt by the Department of a solid waste management plan which shall include:

a. The existing and projected population for such area;
b. The quantities of solid waste generated and estimated to be generated in such area;

c. The availability of sanitary landfill sites and the environmental impact of continued landfill of solid waste on surface and subsurface waters;
d. The method of solid waste disposal to be utilized and the energy or material which shall be recovered from the waste; and
e. Such other data that the Department may reasonably require.

(5b) Authorize units of local government to require by ordinance, that all solid waste generated within the designated geographic area that is placed in the waste stream for disposal be collected, transported, stored and disposed of at a permitted solid waste management facility or facilities serving such area. The provisions of such ordinance shall not be construed to prohibit the source separation of materials from solid waste prior to collection of such solid waste for disposal, or prohibit collectors of solid waste from recycling materials or limit access to such materials as an incident to collection of such solid waste; provided such prohibitions do not authorize the construction and operation of a resource recovery facility unless specifically permitted pursuant to an approved solid waste management plan. If a private solid waste landfill shall be substantially affected by such ordinance then the unit of local government adopting the ordinance shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the proposed ordinance.

(5c) Except for the authority to designate a geographic area to be serviced by a solid waste management facility, delegate authority and responsibility to units of local government to perform all or a portion of a solid waste management program within the jurisdictional area of the unit of local government; provided that no authority over or control of the operations or properties of one local government shall be delegated to any other local government.

(5d) Require that an annual report of the implementation of the solid waste management plan within the designated geographic area be filed with the Department.

(6) The Department is authorized to charge and collect fees from operators of hazardous waste disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility.

(7) Establish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in G.S. 130A-294.1.

(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission may adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities, and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test.

(b1)(1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:

1. The population of the geographic area to be served by the sanitary landfill;
2. The quantity of solid waste to be disposed of in the sanitary landfill; or
3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.

(2) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be

located or is located in a city, the governing board of the city shall provide adequate notice to the public of the public hearing and shall specify the procedure to be followed at the public hearing.

(3) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government shall adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319 prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. A franchise granted for a sanitary landfill shall include:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection on the useful life of the landfill.

(4) An applicant for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the renewed or substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submit-

ted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the new, renewed, or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

(1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;

(1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;

(2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;

(3) Proper labeling of hazardous waste containers;

(4) Use of appropriate containers for hazardous waste;

(5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;

(6) Proper transportation of hazardous waste;

(7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;

(8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other haz-

ardous waste disposal facility or polychlorinated biphenyl disposal facility;

(9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;

(10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;

(11) Monitoring by owners or operators of hazardous waste facilities;

(12) Inspection or copying of records required to be kept;

(13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;

(14) A permit system governing the establishment and operation of hazardous waste facilities;

(15) Additional requirements as necessary for the effective management of hazardous waste;

(16) The operator of the hazardous waste disposal facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Department shall determine what constitutes an adequate amount of insurance;

(17) The bottom of a hazardous waste disposal facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment; and

(18) The operator of a hazardous waste disposal facility shall make monthly reports to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility.

(d) The Commission is authorized to adopt and the Department is authorized to enforce rules where appropriate for public participation in the consideration, development, revision, implementation and enforcement of any permit rule, guideline, information or program under this Article.

(e) Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(f) Within 10 days of receiving an application for a permit or for an amendment to an existing permit for a hazardous waste facility, the Department shall notify the clerk of the board of commissioners of the county or counties in which the facility is proposed to be located or is located and, if the facility is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed, and shall file a copy of the application with the clerk. Prior to the issuance of a permit or an amendment of an existing permit the Secretary or his designee shall conduct a public hearing in the county or in one of the counties in which the hazardous waste facility is proposed to be located or is located. The Secretary or his designee shall give notice of the hearing, and the public hearing shall be in accordance with applicable federal regulations adopted pursuant to RCRA and with Chapter 150B of the General Statutes. Where the provisions of the federal regulations and Chapter 150B of the General Statutes are inconsistent, the federal regulations shall apply.

(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including statutes, regulations and rules; shall be developed and revised in light of the best available scientific data; and shall be based on consideration of at least the following factors:

(1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate;
(2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;
(3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;
(4) Local land uses;
(5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
(6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;
(7) Availability and reliability of public utilities; and
(8) Availability of emergency response personnel and equipment.

(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) Repealed by Session Laws 1989, c. 168, s. 20.
(2) Hazardous waste shall be treated prior to disposal in North Carolina. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste disposal facility.
(3) Any hazardous waste disposal facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the RCRA at the time the permit is issued.
(4) No hazardous waste disposal facility or polychlorinated biphenyl disposal facility shall be located within 25 miles of any other hazardous waste disposal facility or polychlorinated biphenyl disposal facility.
(5) No hazardous waste [disposal] facility operated pursuant to Chapter 130B of the General Statutes shall be located

within 25 miles of a polychlorinated biphenyl landfill facility.

(6) The following shall not be disposed of in a hazardous waste disposal facility: ignitables as defined in the RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.

(7) Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0 x 10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.

(8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.

(9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission.

(10) Prevention, reduction, recycling, and detoxification of hazardous wastes should be encouraged and promoted. Hazardous waste disposal facilities and polychlorinated biphenyl disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation.

(i) The Department shall develop a comprehensive hazardous waste management plan for the State. This plan shall be completed by July 1, 1990 and shall be revised at two-year intervals thereafter. The Department shall make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to: improve waste management; reduce the amount of waste generated; maximize resource recovery, reuse, and conservation; and minimize the amount of hazardous waste which must be disposed of.

(j) The Commission may adopt rules for financial responsibility (including requirements for sufficient availability of funds for facility closure and postclosure monitoring and corrective measures, and for potential liability for sudden and nonsudden accidental occurrences), which may permit the use of insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. Any direct or indirect parent corporation or other parent entity of the operator of a commercial hazardous waste treatment facility shall be deemed to be a guarantor of payment by the operator for closure, monitoring, and corrective measures and for liability incurred by the operator arising from the operation of the commercial hazardous waste treatment facility. The Department may provide a copy of any filing to meet the financial responsibility requirements to the State Treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing, including recommended changes.

(k) Each person who generates hazardous waste who is required to pay a fee under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall submit to the Department at the time such fees are due, a written description of any program to minimize or reduce the volume and quantity or toxicity of such waste.

(*l*) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(n) The Department shall encourage research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste. The Department may establish a waste information exchange for the State.

(o) The Department shall promote public education and public involvement in the decision-making process for the siting and permitting of proposed hazardous waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(p) The Department shall each year recommend to the Governor a recipient for a "Governor's Award of Excellence" which the Governor shall award for outstanding achievement by an industry or company in the area of waste management.

(q) The Secretary shall, at the request of the Governor and under the Governor's direction, assist with the negotiation of interstate agreements for the management of hazardous waste.

(r) The Commission for Health Services shall, in accordance with the procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates which localities may apply to waste management facilities in their jurisdiction.

(s) The Department is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility or hazardous waste disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities. This authority shall also apply to the North Carolina Hazardous Waste Management Commission. (1969, c. 899; 1973, c. 476, s. 128; 1975, c. 311, s. 4; c. 764, s. 1; 1977, c. 123; 1977, 2nd Sess., c. 1216; 1979, c. 464, s. 2; c. 694, s. 2; 1981, c.

704, s. 6; 1983, c. 795, ss. 3, 8.1; c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 973, ss. 6, 7; c. 1034, s. 73; 1985, c. 582; c. 738, ss. 2, 3; 1985 (Reg. Sess., 1986), c. 1027, s. 31; 1987, c. 597; c. 761; c. 773, s. 1; c. 827, ss. 1, 250; c. 848; 1987 (Reg. Sess., 1988), c. 1111, s. 6; 1989, c. 168, ss. 15-22; c. 317; c. 727, s. 218(86); c. 742, s. 6; 1991, c. 537, s. 1; 1993, c. 86, s. 1; c. 273, s. 1; c. 365, s. 1; c. 473, ss. 1, 2; c. 501, s. 14; 1993 (Reg. Sess., 1994), c. 580, s. 1; c. 722, ss. 1, 2.)

Editor's Note. —

Session Laws 1991, c. 537, s. 3, provided that subsection (m) would expire July 1, 1993. However, Session Laws 1993, c. 86, s. 1 rewrote s. 3 of c. 537 of the 1991 Session Laws to remove the expiration date.

The word "disposal" has been added in brackets in subdivision (h)(5), as it appears to have been inadvertently omitted.

Session Laws 1993 (Reg. Sess., 1994), c. 580, which amended this section, in s. 3 provides: "Rules adopted by the Commission prior to the effective date of this act concerning siting and operational requirements shall remain in effect to the extent that the rules are consistent with this act."

Effect of Amendments. —

Session Laws 1993, c. 273, s. 1, effective July 5, 1993, deleted the former last sentence of the second paragraph of subsection (b), which read "Financial responsibility rules shall not apply to solid waste management facilities operated by local government."

Session Laws 1993, c. 365, s. 1, effective July 17, 1993, and applicable to applications for permits submitted on or after that date, inserted the next to last sentence in present subdivision (a)(4)a.

Session Laws 1993, c. 473, s. 1, effective July 23, 1993, and applicable to any application for a permit, the renewal of a permit, or a substantial amendment to a permit filed on or after the date this act becomes effective, added the subdivision designations "a" and "b" under subdivision (a)(4), in present subdivision (a)(4)a, inserted "application for a new permit, the renewal of a permit, or a substantial amendment to a" in the second sentence and substituted "the new permit, renewal of the permit, or substantial amendment to the" for "such" following "prior approval for", also in the second sentence; and in s. 2 added subsection (b1).

Session Laws 1993, c. 501, s. 14, effective July 23, 1993, in subdivision (c)(16) substituted "foreseeable" for "forseeable", substituted "Department" for "Board"; deleted "the Governor's Waste Management Board and to" in subdivision (c)(18); substituted "shall" for "will" in subdivision (h)(6); added subdivision (h)(10); in subsection (i) substituted "The Department" for "The Department, in consultation with the Governor's Waste Management Board and the Division of Environmental Management of the Department of Environment, Health, and Natural Resources", substituted "July 1, 1990" for "1 July 1990", added the present last sentence; and added subsections (n) through (s).

Session Laws 1993 (Reg. Sess., 1994), c. 580, s. 1, effective June 30, 1994, and applicable to all land clearing and inert debris landfills sited on or after that date, in subdivision (a)(4)a. added the second sentence.

Session Laws 1993 (Reg. Sess., 1994), c. 722, ss. 1 and 2, effective July 7, 1994, and applicable to applications submitted on or after that date, in subdivision (a)(4)a., in the present third sentence, substituted "The Department shall not approve an" for "No," deleted "shall be granted," and substituted "except as provided in subdivisions (3) and (4) of subsection (b1) of this section" for "without the Department receiving the prior approval for the sanitary landfill for which the application the new permit, renewal of the permit, or substantial amendment to the permit from the county where it is to be located, except if it is to be located within the corporate limits or extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, of a city as defined in G.S. 160A-1(2), from the city where it is to be located or whose jurisdiction it is in"; and added subdivisions (b1)(3) and (b1)(4).

§ 130A-294.1. Fees applicable to generators and transporters of hazardous waste, and to hazardous waste storage, treatment, and disposal facilities.

CASE NOTES

Fee Not Appropriate. — The legislature did not intend for wastewater treated in elementary neutralization systems and discharged pursuant to National Pollution Discharge Elimination System permits to be assessed a tonnage fee as per subsection (g) of this section. In re E.I. DuPont de Nemours & Co., 109 N.C. App. 435, 428 S.E.2d 195 (1993).

§ 130A-295. Additional requirements for hazardous waste facilities.

Editor's Note. — Session Laws 1993, c. 321, s. 268 provides: "The Department of Environment, Health, and Natural Resources shall not approve any permit for a commercial hazardous waste incinerator or a commercial hazardous waste treatment facility until the Department has developed and adopted a hazardous waste reduction and management plan and has determined that additional commercial hazardous waste treatment capacity is needed."

Session Laws 1993, c. 321, s. 321, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 130A-295.01. Additional requirement for commercial hazardous waste treatment facilities.

Editor's Note. —

Session Laws 1993, c. 321, s. 268 provides: "The Department of Environment, Health, and Natural Resources shall not approve any permit for a commercial hazardous waste incinerator or a commercial hazardous waste treatment facility until the Department has developed and adopted a hazardous waste reduction and management plan and has determined that additional commercial hazardous waste treatment capacity is needed."

Session Laws 1993, c. 321, s. 321, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 130A-295.02. Resident inspectors required at commercial hazardous waste facilities; recovery of costs for same.

(a) The Division shall employ full-time resident inspectors for each commercial hazardous waste facility located within the State. Such inspectors shall be employed and assigned so that at least one inspector is on duty at all times during which any component of the facility is in operation, is undergoing any maintenance or repair, or is undergoing any test or calibration. Resident inspectors shall be assigned to commercial hazardous waste management facilities so as to protect the public health and the environment, to monitor all aspects of the operation of such facilities, and to assure compliance with all laws and rules administered by the Division and by any other division of the Department. Such inspectors may also enforce laws or rules administered by any other agency of the State pursuant to an appropriate memorandum of agreement entered into by the Secretary and the chief administrative officer of such agency. The Division may assign additional resident inspectors to a facility depending upon the quantity and toxicity of waste managed at a facility, diversity of types of waste managed at the facility, complexity of management technologies utilized at the facility, the range of components which are included at the facility, operating history of the facility, and other factors relative to the need for on-site inspection and enforcement capabilities. The Division, in consultation with other divisions of the Department, shall define the duties of each resident inspector and shall determine whether additional resident inspectors are needed at a particular facility to meet the purposes of this section.

(b) The Division shall establish requirements pertaining to education, experience, and training for resident inspectors so as to assure that such inspectors are fully qualified to serve the purposes of this section. The Division shall provide its resident inspectors with such training, equipment, facilities, and supplies as may be necessary to fulfill the purposes of this section.

(c) As a condition of its permit, the owner or operator of each commercial hazardous waste facility located within the State shall provide and maintain such appropriate and secure offices and laboratory facilities as the Department may require for the use of the resident inspectors required by this section.

(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned.

(e) No commercial hazardous waste facility shall be operated, undergo any maintenance or repair, or undergo any testing or calibration unless an inspector employed by the Division is present at the facility.

(f) The requirements of this section are intended to enhance the ability of the Department to protect the public health and the environment by providing the Department with the authority and resources necessary to maintain a rigorous inspection and enforcement program at commercial hazardous waste management facilities. The requirements of this section are intended to be supplementary to other requirements imposed on hazardous waste facilities. This section shall not be construed to relieve either the owner or the operator of any such facility or the Department from any other requirement of law or to require any unnecessary duplication of reporting or monitoring requirements.

(g) For the purpose of enforcing the laws and rules enacted or adopted for the protection of the public health and the environment, resident inspectors employed pursuant to this section may be commissioned as special peace officers as provided in G.S. 113-28.1. The provisions of Article 1A of Chapter 113 of the General Statutes shall apply to resident inspectors commissioned as special peace officers pursuant to this subsection.

(h) The Department shall determine the full cost of the employment and assignment of resident inspectors at each commercial hazardous waste facility located within the State. Such costs shall include, but are not limited to, costs incurred for salaries, benefits, travel, training, equipment, supplies, telecommunication and data transmission, offices and other facilities other than those provided by the owner or operator, and administrative expenses. The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility. The operator of each such facility shall serve as the collection agent for such fees, shall account to the Department on a monthly basis for all fees collected, and shall deposit with the Department all funds collected pursuant to this section within 15 days following the last day of the month in which such fees are collected. Fees collected under this section shall be credited to the General Fund as nontax revenue.

(i) The Division shall establish and revise as necessary a program for assigning resident inspectors to commercial hazardous waste facilities so that scheduled rotation or equivalent oversight procedures ensure that each resident inspector will maintain objectivity.

(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall adopt rules establishing reasonable times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities. Rules adopted pursuant to this subsection shall establish classifications of special purpose hazardous waste facilities based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration. Rules adopted pursuant to this subsection shall specify a minimum number of inspections during such times as the facility is subject to inspection. Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection.

(k) For purposes of this section, a facility that utilizes hazardous waste as a fuel or that has used hazardous waste as a fuel within the preceding calendar year, and that is an affiliate of and adjacent or contiguous to a commercial hazardous waste facility, shall be subject to inspection as a special purpose commercial hazardous waste facility under subsection (j) of this section as if the facility that utilizes hazardous waste as a fuel were a part of the commercial hazardous waste facility.

(*l*) As used in this section, the words "affiliate", "parent", and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

(m) The Department shall report annually on or before 1 September to the Environmental Review Commission on the implementation of the resident inspectors program. (1989 (Reg. Sess., 1990), c. 1082, s. 1; 1991, c. 20, s. 2; c. 403, s. 4; c. 450, s. 2; 1993, c. 511, s. 1; c. 513, s. 2(b); c. 553, s. 41.)

Editor's Note. —

Session Laws 1993, c. 513, s. 2 repeals Session Laws 1989, c. 1082, s. 2, as rewritten by Session Laws 1991, c. 20, s. 1 and Session Laws 1991 (Reg. Sess., 1992), c. 990, s. 8, as noted in the main volume under this section.

Effect of Amendments. —

Session Laws 1993, c. 511, s. 1, effective June 30, 1993, except for the change made to G.S. 130A-295.02(h), which becomes effective July 1, 1994, added the last sentence of subsection (h); rewrote subsection (i); inserted "Special purpose" at the beginning of the third to last sentence of subsection (j); and added subsections (k) and (*l*).

Session Laws 1993, c. 513, s. 2, effective July 24, 1993, added subsection (m).

Session Laws 1993, c. 553, s. 41, effective July 24, 1993, which amended this section as it read prior to amendment by c. 511, s. 1, in the third sentence of subsection (i) substituted "waste facility that is" for "facility which is".

§ 130A-296: Repealed by Session Laws 1993, c. 501, s. 15, effective July 23, 1993.

§ 130A-301.1. Land clearing and inert debris landfills with a disposal area of 1/2 acre or less; recordation.

(a) No landfill for the on-site disposal of land clearing and inert debris shall, at the time the landfill is sited, be sited 50 feet or less from a boundary of an adjacent property.

(b) The owner of a landfill for the on-site disposal of land clearing and inert debris shall file a certified copy of a survey of the property on which the landfill is located in the register of deeds' office in the county in which the property is located, which survey shall accurately show the location of the landfill and the record owner of the land on which the landfill is situated.

(c) Prior to the lease or conveyance of any lot or tract of land which directly abuts or is contiguous to the disposal area used for land clearing and inert debris, the owner of the lot or tract shall prepare a document disclosing that a portion of the property has been used as a disposal area for land clearing and inert debris or has been used to meet applicable minimum buffer requirements. The disclosure shall include a legal description of the property that would be sufficient in an instrument of conveyance and shall be filed in the register of deeds office prior to any lease or conveyance.

(d) No public, commercial, or residential building shall be located or constructed on the property, or any portion of the property on which the landfill for the on-site disposal of land clearing and inert debris is located, 50 feet or less from the landfill. Construction of such buildings, with the exception of site preparation and foundation work, shall not commence until after closure of the on-site land clearing and inert debris landfill.

(e) Source reduction methods including, but not limited to, chipping and mulching of land clearing and inert debris shall be utilized to the maximum degree technically and economically feasible.

(f) The Department of Transportation is exempt from subsections (b) and (c) of this section for the on-site disposal of land clearing and inert debris on highway rights-of-way. (1993 (Reg. Sess., 1994), c. 580, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 580, s. 4, made this section effective upon ratification and applicable to all land clearing and inert debris landfills sited on or after that date. The act was ratified on June 30, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 580, which enacted this section, in s. 3 provides: "Rules adopted by the Commission prior to the effective date of this act concerning siting and operational requirements shall remain in effect to the extent that the rules are consistent with this act."

§ 130A-304. Confidential information protected.

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Article is confidential information and shall not be subject to disclosure under G.S. 132-6:

(1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.

(2) Information that is confidential under any provision of federal or state law.

(3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the Department or the requesting agency or when relevant in any proceeding under this Article.

(c) **(Effective October 1, 1994 — See editor's note)** Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment. (1977, 2nd Sess., c. 1216; 1983, c. 891, s. 2; 1985, c. 738, s. 5; 1987, c. 282, s. 20; 1991, c. 745, s. 2; 1993, c. 539, s. 951; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than two years or both" in subsection (c).

Part 2A. Nonhazardous Solid Waste Management.

§ 130A-309.06. Additional powers and duties of the Department.

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this Part by 1 March 1991. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.

(2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.

(3) Encourage coordinated local activity for solid waste management within a common geographical area.

(4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.

(5) Cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this Part.

(6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs which preserve and enhance the quality of the air, water, and other natural resources of the State.

(7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.

(8) Manage a program of grants for programs for recycling and special waste management, and for programs which provide for the safe and proper management of solid waste.

(9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.

(11) Conduct at least one workshop each year in each region served by a council of governments.

(12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park.

(13) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal.

(14) Identify and analyze, with assistance from the Department of Commerce pursuant to G.S. 130A-309.14, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries.

(b) The Department may refuse to issue a permit to an applicant who by past conduct in this State has repeatedly violated related statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent of the subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation.

(c) The Department shall prepare by 1 May of each year a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

(1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.

(2) The total amounts of solid waste generated, recycled, and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.

(3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.

(4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.04.

(5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State

agencies to implement to meet the requirements of this Part.

(6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for such materials.

(7) Recommendations to the Governor and the General Assembly to improve the management and recycling of solid waste in the State.

(d) The Department of Environment, Health, and Natural Resources shall prepare by March 1, 1994, and every other year thereafter, a report assessing the recycling industry and recyclable materials markets in the State. (1989, c. 784, s. 2; 1991, c. 336, s. 4; c. 621, ss. 3, 4; 1993, c. 250, s. 3.)

Effect of Amendments. — The 1993 amendment, effective June 30, 1993, added subdivision (a)(14); in the first sentence of the introductory language of subsection (c), substituted "of each year" for "1991, and every year thereafter"; and added subsection (d).

§ 130A-309.09B. Local government recycling programs.

Editor's Note. — Session Laws 1993, c. 86, s. 1, effective May 26, 1993, deleted the July 1, 1993, expiration date that had been provided in Session Laws 1991, c. 537, s. 3, as noted in the main volume under this section. Thus, the first version of subdivision (a)(1), as set out in the main volume, remains in effect.

§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials which are environmentally compatible.

(c)(1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material which is recyclable. Notice of recyclability shall be printed on each bag purchased by the retailer.

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d)(1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless such product is composed of material which is recyclable.

(2) After October 1, 1997, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product that is to be used in conjunction with food for human consumption unless the Secretary certifies that at least twenty-five percent (25%) of such products are being recycled. This subdivision does not apply to any polystyrene foam product containing at least twenty-five percent (25%) polystyrene derived from products that have been collected for recycling after those products have served the purpose for which they were manufactured.

(e) No person shall distribute, sell, or offer for sale in this State any plastic container product unless the product has a molded label indicating the plastic resin used to produce the plastic container product. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on the bottom of the plastic container product and be clearly visible. Plastic beverage containers having a capacity of less than 16 fluid ounces, nonsolid food liquid containers having a capacity of less than 16 fluid ounces, and rigid plastic containers having a capacity of less than eight fluid ounces are exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.
(2) For high density polyethylene, the letters "HDPE" and the number 2.
(3) For vinyl, the letter "V" and the number 3.
(4) For low density polyethylene, the letters "LDPE" and the number 4.
(5) For polypropylene, the letters "PP" and the number 5.
(6) For polystyrene, the letters "PS" and the number 6.
(7) For any other, including multi-material containers, the letters "OTHER" and the number 7.

(f) In accordance with the following schedule, no person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1, effective October 1, 1991.
(2) Used oil.
(3) Yard trash, except in landfills classified for such use under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans, after July 1, 1994.

(f1) In accordance with the following schedule, no person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles, after July 1, 1994.
(2) Aluminum cans, after July 1, 1994.
(3) Steel cans, unless the steel is recoverable at the end of the incineration process, after July 1, 1994.
(4) White goods, after July 1, 1994.

Provided that this subsection shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste; and provided further that this subsection shall not apply to antifreeze (ethylene glycol) which cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(g) Prior to the effective dates specified in this section, the Department shall identify and assist in developing alternative disposal, processing, or recycling options for the solid waste identified in this section.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill or incineration shall not be construed as a violation of subsections (f) or (f1) of this section. (1989, c. 784, s. 2; 1991, c. 23, s. 1; c. 375, s. 1; 1991 (Reg. Sess., 1992), c. 932, ss. 1, 2; 1993, c. 290, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in the section caption, substituted "solid" for "special" and inserted "or by incineration" following "landfills"; deleted "After 1 January 1990" at the beginning of subsection (a); deleted "After 1 October 1991" at the beginning of subsection (b); in subdivision (c)(1), deleted "After 1 January 1991" throughout the subdivision and deleted "by 1 January 1993" in subdivision (c)(2); deleted "After 1 October 1991" at the beginning of subdivision (d)(1); deleted "After 1 July 1991" at the beginning of subsection (e); substituted "solid" for "special" in the first sentence of subsection (f), deleted "after 1 October 1990" in subdivision (f)(2), deleted "after 1 January 1993" in subdivision (f)(3), deleted "after 1 January 1991" in subdivision (f)(4), and added subdivisions (f)(5) and (f)(6); and added subsections (f1) and (h) and made related changes.

§ 130A-309.12. Solid Waste Management Trust Fund.

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

(1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;
(2) Funding research on the solid waste stream in North Carolina;
(3) Funding activities related to the development of secondary materials markets;
(4) Providing funding for demonstration projects as provided by this Part; and
(5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) **(Effective until June 30, 1997)** The Solid Waste Management Trust Fund shall consist of the following:

(1) Funds appropriated by the General Assembly.
(2) Contributions and grants from public or private sources.
(3) Five percent (5%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.
(4) **(Repealed effective July 1, 1999)** Five percent (5%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(b) **(Effective June 30, 1997)** The Solid Waste Management Trust Fund shall consist of the following:

(1) Funds appropriated by the General Assembly.
(2) Contributions and grants from public or private sources.
(3) Ten percent (10%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.
(4) **(Repealed effective July 1, 1999)** Five percent (5%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(c) The Department shall report annually on or before 1 September to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund. (1989, c. 784, s. 2; 1991, c. 690, s. 10; 1991 (Reg. Sess., 1992), c. 990, s. 7; 1993, c. 471, ss. 5, 8; c. 513, s. 1; c. 548, s. 3.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until June 30, 1997. The second version of subsection (b) set out above is effective June 30, 1997.

Editor's Note. —

Session Laws 1993, c. 471, s. 11 provides that the repeal of subdivision (b)(4) by c. 471, s. 8 is effective July 1, 1999.

Session Laws 1993, c. 548, s. 9 provides that the amendment to subsection (b) made by c. 548, s. 3 expires June 30, 1997.

Effect of Amendments. —

Session Laws 1993, c. 471, s. 5, effective January 1, 1994, added "the following" at the end of the introductory language, added subdivision (b)(4), and made stylistic changes; and c. 471, s. 8 repealed subdivision (b)(4) effective July 1, 1999.

Session Laws 1993, c. 513, s. 1, effective July 24, 1993, in subsection (c), substituted "annually on or before 1 September to" for "on an annual basis beginning 1 September 1992 to the Joint Legislative Commission on Governmental Operations and to".

Session Laws 1993, c. 548, s. 3, effective October 1, 1993, in subdivision (b)(3) substituted "Five percent (5%)" for "Ten percent (10%)" and made other stylistic changes. For expiration of this amendment, see the Editor's note.

§ 130A-309.14. Duties of State agencies.

(a) Each State agency, including the General Assembly, the General Court of Justice, and The University of North Carolina shall:

(1) Establish a program in cooperation with the Department and the Department of Administration, for the collection of all recyclable aluminum and wastepaper materials generated in State offices throughout the State, including, at a minimum, high-grade office paper and corrugated paper.
(2) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or

other arrangements with buyers of the recyclable materials.

(3) Evaluate the amount of recyclable wastepaper material recycled and make all necessary modifications to the recycling program to ensure that all recyclable wastepaper materials are effectively and practically recycled.

(4) Establish and implement, in cooperation with the Department and the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve maximum feasible reduction of solid waste generated as a result of agency operations.

(5) Prepare any written report in compliance with the model report under subsection (j) of this section. The State agency shall, in lieu of distributing the report in mass:

a. Notify persons to whom each agency is required to report, and any other persons it deems appropriate, that a report has been published, its subject and title, and the locations, including State libraries, at which the report is available;

b. Deliver any report to only those State libraries that each agency determines is likely to receive requests for a particular report; and

c. Distribute a report to only those who request the report.

A State library that has received a report shall distribute a report only upon request. Any State agency required by law to report to an entity shall be in compliance with that law by notifying that entity under sub-subdivision a. of this subdivision.

(a1) The Department of Administration shall review and revise its bid procedures and specifications set forth in Article 3 of Chapter 143 of the General Statutes and the Department of Transportation shall review and revise its bid procedures and specifications set forth in Article 2 of Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products.

(1) The Department of Administration shall require the procurement of such supplies and products to the extent that the purchase or use is practicable and cost-effective. The Department of Administration shall require the purchase or use of remanufactured toner cartridges for laser printers to the extent practicable.

(2) The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the purchase or use is practicable and cost-effective.

(3) The Department of Administration and the Department of Transportation shall each prepare an annual report by October 1 of each year to the Environmental Review Commission concerning the review and revision of bid procedures and the purchase and use of reusable, refillable, repairable, more durable, and less toxic supplies and products.

(b) The Department of Commerce shall assist and encourage the recycling industry in the State. Assistance and encouragement of the recycling industry shall include:

(1) Assisting the Department in the identification and analysis, by the Department pursuant to G.S. 130A-309.06, of components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries;

(2) Providing information on the availability and benefits of using recycled materials to businesses and industries in the State; and

(3) Distributing any material prepared in implementing this section to the public, businesses, industries, units of local government, or other organizations upon request.

(c) Repealed by Session Laws 1993, c. 250, s. 2, effective June 30, 1993.

(d) The Department of Commerce shall investigate the potential markets for composted materials and shall submit its findings to the Department for the waste registry informational program administered by the Department in order to stimulate absorption of available composted materials into such markets.

(e) On or before 1 March 1991, the Department of Commerce shall report to the General Assembly its findings relative to:

(1) Potential markets for composted materials, including private and public sector markets;

(2) The types of materials which may legally and effectively be used in a successful composting operation; and

(3) The manner in which the composted materials should be marketed for optimum use.

(f)(1) All State agencies, including the Department of Transportation and the Department of Administration, and units of local government are required to procure compost products when they can be substituted for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable engineering and environmental quality standards, specifications, and rules. This product preference shall apply to, but not be limited to, highway construction and maintenance projects, highway planting and beautification projects, recultivation and erosion control programs, and other projects.

(2) The Department of Transportation shall, consistent with economic feasibility and applicable engineering and environmental quality standards, use scrap tires, demolition debris, and untreated, stabilized, or encapsulated ash from boilers and incinerators in highway construction and maintenance projects.

(g) The Department of Public Instruction, with the assistance of the Department and The University of North Carolina, shall develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the State system of education. At a minimum, the guidelines shall address solid waste generated in administrative offices, classrooms, dormitories, and cafeterias. The guidelines shall be developed by 1 January 1991.

(h) In order to orient students and their families to the recycling of waste and to encourage the participation of schools, communities, and families in recycling programs, the school board of each school district in the State shall make available an awareness program in the recycling of waste materials. The program shall be provided at both the elementary and secondary levels of education.

(i) The Department of Public Instruction is directed to develop, from funds appropriated for environmental education, curriculum materials and resource guides for a recycling awareness program for instruction at the elementary, middle, and high school levels.

(j) The Department of Administration shall develop a model report for reports published by any State agency, the General Assembly, the General Court of Justice, or The University of North Carolina. This model report shall satisfy the following:

(1) The paper in the report shall, to the extent economically practicable, be made from recycled paper and shall be capable of being recycled.

(2) The other constituent elements of the report shall, to the extent economically practicable, be made from recycled products and shall be capable of being recycled or reused.

(3) The report shall, to the extent practicable, be printed on both sides of the paper. (1989, c. 784, s. 2; 1991, c. 522, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 32; 1993, c. 197, s. 1; c. 250, ss. 1, 2; c. 448, ss. 1, 2; c. 553, s. 74.)

Editor's Note. —

Session Laws 1993, c. 197, s. 3 provides that the Department of Administration and the Department of Transportation shall prepare the first report to the Environmental Review Commission on October 1, 1994.

Session Laws 1993, c. 513, s. 4, effective July 24, 1993, amends Section 3 of Chapter 197 of the 1993 Session Laws to read: "This act becomes effective 1 January 1994. The Department of Administration and the Department of Transportation shall make the first report to the Environmental Review Commission on or before 1 October 1994."

Effect of Amendments. —

Session Laws 1993, c. 197, s. 1, as amended by Session Laws 1993, c. 553, s. 74, effective January 1, 1994, added subsection (a1).

Session Laws 1993, c. 250, effective June 30, 1993, in s. 1 in subdivision (b)(1), substituted "Assisting the Department in the identification and analysis, by the Department pursuant to G.S. 130A-309.06, of" for "Identifying and analyzing in cooperation with the Department"; and in s. 2 deleted subsection (c), which read "By 1 March 1991, and every other year thereafter, the Department of Commerce shall prepare a report assessing the recycling industry and recyclable materials markets in the State."

Session Laws 1993, c. 448, effective January 1, 1994, in s. 1, in subsection (a) substituted "Each State agency, including" for "It shall be the duty of each State agency", substituted "University of North Carolina shall" for "University of North Carolina, by 1 January 1992, to"; and added subdivision (a)(5); and in s. 2 added subsection (j).

§ 130A-309.14A. Reports by certain State-assisted entities.

Any community college, as defined in G.S. 115D-2(2), and any nonprofit corporation that receives State funds are encouraged to prepare any written reports in compliance with G.S. 130A-309.14(j). (1993, c. 448, s. 3.)

Editor's Note. — Session Laws 1993, c. 448, s. 6 makes this section effective January 1, 1994.

§ 130A-309.25. Training of operators of solid waste management facilities.

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of incinerators, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1996, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless such person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at the facilities.

(e) In developing training programs for incinerator operators under this section, the Department shall establish and consult with ad hoc advisory groups to help coordinate the requirements under this section with other training programs for incinerator operators. (1989, c. 784, s. 2; 1993, c. 29, s. 1.)

Effect of Amendments. — The 1993 amendment, effective April 21, 1993, in subsection (a) inserted "operators of incinerators" following "training programs for", and added subsection (e).

Part 2B. Scrap Tire Disposal Act.

§ 130A-309.54. Use of scrap tire tax proceeds.

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60. (1989, c. 784, s. 3; 1991, c. 221, s. 3; 1993, c. 364, s. 1(a).)

Editor's Note. — Session Laws 1993, c. 364, s. 1(a) added a sentence at the end of former G.S. 130A-309.54(a), repealed by Section 3 of Chapter 221 of Session Laws 1991, to read: "This fee does not apply to tires sold for placement on newly manufactured vehicles."; pursuant to ss. 1(b) and 3 of c. 364, s. 1 applied retroactively to tires sold on or after Jan. 1, 1990, and expired June 30, 1991.

Session Laws 1993, c. 364, which amended this section, in s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former

G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

§ 130A-309.58. Disposal of scrap tires.

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

(1) Incinerating;
(2) Retreading;
(3) Constructing crash barriers;
(4) Controlling soil erosion when whole tires are not used;
(5) Chopping or shredding;
(6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other products;
(7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;
(8) Sludge composting;
(9) Using for agriculture-related purposes;
(10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries Commission;
(11) Cutting, stamping, or dyeing tires;
(12) Pyrolizing and other physico-chemical processing;
(13) Hauling to out-of-State collection or processing sites; and
(14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) **(Effective until June 30, 1997)** A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may not charge a disposal fee for the disposal of scrap tires except as provided in this subsection. A unit of local government or contracting party may charge a disposal fee that does not exceed the cost of disposing of the scrap tires only if:

(1) The scrap tires are new tires that are being disposed of by their manufacturer because they do not meet the manufacturer's standards for salable tires; or

§ 130A-309.58(e) is set out twice. See notes.

(2) The scrap tires are delivered to a local government scrap tire disposal site without an accompanying certificate required by G.S. 130A-309.58(f) that indicates that the tires originated in a county within North Carolina.

(e) **(Effective June 30, 1997)** A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires only to the extent that the cost per tire of disposal exceeds the amount received by the county under G.S. 105-187.19 during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires regardless of whether a tax has been paid on the tire under Article 5B of Chapter 105 and regardless of the tire's place of origin.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler. (1989, c. 784, s. 3; 1991, c. 221, s. 5; 1993, c. 548, s. 4.)

Subsection (e) Set Out Twice. — The first version of subsection (e) set out above is effective until June 30, 1997. The second version of subsection (e) set out above is effective June 30, 1997.

Editor's Note. — Section 9 of Session Laws 1993, c. 548 provides that s. 4 of c. 548, which amended subsection (e) of this section, will expire June 30, 1997.

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, rewrote subsection (e). For expiration of this amendment, see the Editor's note.

§ 130A-309.61. (Effective until June 30, 1997) Effect on local ordinances.

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent the local ordinance is inconsistent with this Part or the rules adopted pursuant to this Part. (1989, c. 784, s. 3; 1993, c. 548, s. 5.)

For this section as in effect after June 30, 1997, see the main volume.

Editor's Note. — Session Laws 1993, c. 548, s. 9 provides that s. 5 of c. 548, which amended this section, will expire June 30, 1997.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, substituted the present section catchline for "Preemption"; in the first sentence substituted "the local" for "that any local", inserted "the" preceding "rules" and deleted the last sentence which read "A unit of local government may not charge any fees for the disposal of scrap tires except as authorized by this Part." For expiration of this amendment, see the Editor's note.

§ 130A-309.63. (Expires June 30, 1997) Scrap Tire Disposal Account.

(a) Creation. — The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. — The Department may use revenue in the Account only as authorized by this section. The Department may use up to twenty-five percent (25%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it.

(c) Eligibility. — A unit of local government is not eligible for a grant unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. — The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) Reports. — The Department shall make quarterly reports on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the quarter, and the amount of revenue used for grants and to clean up nuisance tire collection sites. A quarterly report shall be filed within 60 days after the end of a calendar quarter. (1993, c. 548, s. 6.)

Editor's Note. — Session Laws 1993, c. 548, s. 9 makes this section become effective October 1, 1993. For expiration date, see the Editor's note below.

Session Laws 1993, c. 548 provides that s. 6, which added this section, will expire June 30, 1997.

Session Laws 1993, c. 548, s. 7, effective October 1, 1993, and expiring June 30, 1995, provides: "Of the revenue credited to the Scrap Tire Disposal Account created by this act, the Department of Environment, Health, and Natural Resources may use up to five hundred thousand dollars ($500,000) to develop and implement pilot programs to demonstrate alternative, market-based approaches to scrap tire collection and recycling in North Carolina. A grant to any one private company shall not exceed one hundred thousand dollars ($100,000). In developing and implementing these pilot programs, the Department may contract with private companies that have expertise in the collection and recycling of scrap tires. The Department shall report the results of the pilot programs, along with the recommendations regarding the implementation of a market-based scrap tire collection and recycling program on a statewide basis, to the Environmental Review Commission by 1 January 1995."

Session Laws 1993, c. 548, s. 9 provides in part: "Any funds remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Fund..... The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends December 31, 1993."

§§ 130A-309.64 through 130A-309.69: Reserved for future codification purposes.

Part 2C. Lead-Acid Batteries.

§§ 130A-309.74 through 130A-309.79: Reserved for future codification purposes.

Part 2D. Management of Discarded White Goods.

§ 130A-309.80. Findings and purpose.

The General Assembly finds that white goods are difficult to dispose of, that white goods that contain chlorofluorocarbon refrigerants pose a danger to the environment, and that it is in the best interest of the State to require that chlorofluorocarbon refrigerants be removed from discarded white goods. This Part therefore provides for the management of discarded white goods. (1993, c. 471, s. 4.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this Part effective January 1, 1994.

§ 130A-309.81. (Effective until July 1, 1998) Management of discarded white goods; disposal fee prohibited.

(a) Duty. — Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

§ 130A-309.81 is set out twice. See notes.

(b) Restrictions. — A unit of local government or a contracting party may not charge a disposal fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. — Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article. (1993, c. 471, ss. 4, 6; 1993 (Reg. Sess., 1994), c. 745, ss. 36, 37.)

Section Set Out Twice. — The section above is effective until July 1, 1998. For the section as amended effective July 1, 1998, see the following section also numbered § 130A-309.81.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 36, effective August 1, 1994, in the section catchline substituted "disposal" for "additional"; and in subsection (b) deleted "that is in addition to the fee charged for the disposal of any other type of municipal solid waste" from the end of the first sentence.

§ 130A-309.81. (Effective July 1, 1998) Management of discarded white goods; disposal fee allowed.

(a) Duty. — Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. — A unit of local government or a contracting party may charge a disposal fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. — Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article. (1993, c. 471, ss. 4, 6; 1993 (Reg. Sess., 1994), c. 745, ss. 36-38.)

Section Set Out Twice. — The section above is effective July 1, 1998. For the section as in effect until July 1, 1998, see the preceding section, also numbered § 130A-309.81.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 37, repealed Session Laws 1993, c. 471, s. 6, which, effective July 1, 1998, would have deleted "not" following "a contracting party may" in subsection (b). However, Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 38, effective July 1, 1998, itself made this change.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 38, effective July 1, 1998, in the section catchline substituted "allowed" for "prohibited"; and in subsection (b), in the first sentence deleted "not" preceding "charge a."

§ 130A-309.82. (Repealed effective July 1, 1999) Use of disposal tax proceeds by counties.

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county may use proceeds of the tax distributed to it under that Article only for the management of discarded white goods. (1993, c. 471, s. 4.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this section effective January 1, 1994. Sections 7 and 11 of c. 471 provide that this section is repealed effective July 1, 1999.

§ 130A-309.83. (Repealed effective July 1, 1999) White Goods Management Account.

The White Goods Management Account is established within the Department. The Account consists of revenue credited to the Account from the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes.

The Department shall use revenue in the Account to make grants to units of local government to assist them in managing discarded white goods. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit to manage white goods, the severity of a unit's white goods management problem, and the effort made by a unit to manage white goods within the resources available to it.

A unit of local government is not eligible for a grant unless its costs of managing white goods for a six-month period preceding the date the unit files an application for a grant exceeded the amount the unit received during that period from the proceeds of the white goods disposal tax under G.S. 105-187.24. The Department shall determine the six-month period to be used in determining who is eligible for a grant. A grant to a unit may not exceed the unit's unreimbursed cost for the six-month period. (1993, c. 471, s. 4.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this section effective January 1, 1994. Sections 7 and 11 of c. 471 provide that this section is repealed effective July 1, 1999.

§ 130A-309.84. Civil penalties for improper disposal.

The Department may assess a civil penalty of not more than one hundred dollars ($100.00) against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may assess this penalty for the day the unlawful disposal occurs and each following day until the white good is disposed of properly.

The Department may assess a penalty of up to one hundred dollars ($100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

Civil penalties collected under this section shall be credited to the General Fund as nontax revenue. (1993, c. 471, s. 4.)

§ 130A-309.85. (Effective until July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall make an annual report to the Environmental Review Commission concerning the management of white goods. The report shall be submitted by October 1 of each year, shall cover the fiscal year ending on the preceding June 30, and shall include the following information:

(1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.
(2) The cost to each county of managing white goods during the period covered by the report.
(3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.
(4) Any other information the Department considers helpful in understanding the problem of managing white goods. (1993, c. 471, s. 4.)

Section Set Out Twice. — The section above is effective until July 1, 1999. For the section as amended effective July 1, 1999, see the following section, also numbered § 130A-309.85.

Editor's Note. — Session Laws 1993, c. 471, which enacted this section, in s. 11 provides: "The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994 to June 30, 1994."

§ 130A-309.85. (Effective July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall make an annual report to the Environmental Review Commission concerning the management of white goods. The report shall be submitted by October 1 of each year, shall cover the fiscal year ending on the preceding June 30, and shall include the cost to each county of managing white goods during the period covered by the report, the additional fees on white goods collected by each county during the period covered by the report, and any other information the Department considers helpful in understanding the problem of managing white goods. (1993, c. 471, ss. 4, 9.)

Section Set Out Twice. — The section above is effective July 1, 1999. For the section as in effect until July 1, 1999, see the preceding section, also numbered § 130A-309.85.

Effect of Amendments. — Session Laws 1993, c. 471, s. 9, effective July 1, 1999, substituted "the cost to each county of managing white goods during the period covered by the report, the additional fees on white goods collected by each county during the period covered by the report, and any" following "shall include" for former subdivisions (1), (2), (3), and (4) which specified information to be included in the report.

§ 130A-309.86. Effect on local ordinances.

This Part preempts any local ordinance regarding the management of white goods that is inconsistent with this Part or the rules adopted pursuant to this Part. It does not preempt any local ordinance regarding the management of white goods that is consistent with this Part or rules adopted pursuant to this Part. (1993, c. 471, s. 4.)

Part 3. Inactive Hazardous Sites.

§ 130A-310.9. Voluntary remedial actions; maximum financial responsibility; agreements; implementation and oversight by private engineering and consulting firms.

(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of three million dollars ($3,000,000) for the cost of implementing a remedial action program at a single inactive hazardous substance or waste disposal site. The limitation of liability contained in this section applies only to the cost of implementation of the program and does not apply to the cost of the development of the remedial action plan.

(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party which provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2.

(c) The Department may select and hire private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties. An owner, operator, or other responsible party that chooses to use a private environmental consulting or engineering firm shall reimburse the Department for the cost of all work performed by the firm. A voluntary remedial action that is implemented and overseen by a private environmental consulting or engineering firm shall be subject to rules adopted pursuant to G.S. 130A-310.12(b). (1987, c. 574, s. 2; 1989, c. 286, s. 7; 1993 (Reg. Sess., 1994), c. 598, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 598, which amended this section, in s. 4, provides: "The Environmental Review Commission may study, in cooperation with personnel designated by the Secretary of Environment, Health, and Natural Resources, the possible implementation of a program that would use licensed site professionals to oversee voluntary and other remedial actions by responsible parties in lieu of oversight by State personnel, the procedures and standards that would govern the designation and licensing of licensed site professionals, the functions of licensed site professionals, and the weight to be accorded by a State agency to any work overseen and approved by a licensed site professional."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, substituted the present catchline for "Maximum financial responsibility; voluntary remedial actions"; added the third sentence in subsection (b); added subsection (c); and made stylistic changes.

§ 130A-310.12. Administrative procedure; adoption of rules.

(a) The provisions of Chapter 150B of the General Statutes apply to this Part. The Commission shall adopt rules for the implementation of this Part.

(b) The Commission shall adopt rules governing the selection and use of private environmental engineering and consulting firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties under G.S. 130A-310.9(c). Rules adopted under this subsection shall specify:

(1) Standards applicable to private environmental consulting and engineering firms.

(2) Procedures for identifying and choosing firms.

(3) Standards and procedures governing charges by private environmental consulting and engineering firms and the reimbursement of those charges.

(4) Financial assurances to be required of an owner, operator, or other responsible party that chooses to implement a voluntary remedial action under G.S. 130A-310.9(c). (1987, c. 574, ss. 2, 5; 1993 (Reg. Sess., 1994), c. 598, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 598, which amended this section, in s. 4, provides: "The Environmental Review Commission may study, in cooperation with personnel designated by the Secretary of Environment, Health, and Natural Resources, the possible implementation of a program that would use licensed site professionals to oversee voluntary and other remedial actions by responsible parties in lieu of oversight by State personnel, the procedures and standards that would govern the designation and licensing of licensed site professionals, the functions of licensed site professionals, and the weight to be accorded by a State agency to any work overseen and approved by a licensed site professional."

Session Laws 1993 (Reg. Sess., 1994), c. 598, which amended this section, in s. 5 provides in part: "Rules adopted pursuant to G.S. 130A-310.12(b), as enacted by Section 2 of this act, shall not become effective prior to 1 January 1995."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added the subsection (a) designation; in subsection (a), in the first sentence deleted from the beginning "Except as may be otherwise specifically provided" and inserted "of the General Statutes", in the second sentence deleted "pursuant to Chapter 150B of the General Statutes, administrative" preceding "adopt," deleted from the end "not later than six months after enactment," deleted the third sentence which read "Such rules may be the same as or similar to the federal rules for implementation of CERCLA/SARA"; and added subsection (b).

ARTICLE 10.

North Carolina Drinking Water Act.

§ 130A-313. Definitions.

The following definitions shall apply throughout this Article:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) "Certified laboratory" means a facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the Department.

(3) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(4) "Drinking water rules" means rules adopted pursuant to this Article.

(5) "Federal act" means the Safe Drinking Water Act of 1974, P.L. 93-523, as amended.

(6) "Federal agency" means any department, agency or instrumentality of the United States.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(8) "National primary drinking water regulations" means primary drinking water regulations promulgated by the Administrator pursuant to the federal act.

(9) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(10) "Public water system" means a system for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and

b. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

A public water system is either a "community water system" or a "noncommunity water system" as follows:

a. "Community water system" means a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.

b. "Noncommunity water system" means a public water system which is not a community water system.

(11) "Supplier of water" means a person who owns, operates or controls a public water system.

(12) "Treatment technique requirement" means a requirement of the drinking water rules which specifies a specific treatment technique for a contaminant which leads to reduction in the level of the contaminant sufficient to comply with the drinking water rules. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1987, c. 704, s. 2; 1993 (Reg. Sess., 1994), c. 776, s. 14.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, in the introductory language of subdivision (10) deleted the former second sentence, which read "Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system."

§ 130A-315. Drinking water rules.

(a) The Commission shall adopt and the Secretary shall enforce drinking water rules to regulate public water systems. The rules may distinguish between community water systems and noncommunity water systems.

(b) The rules shall:

(1) Specify contaminants which may have an adverse effect on the public health;

(2) Specify for each contaminant either:

a. A maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of the contaminant in water in public water systems; or

b. One or more treatment techniques which lead to a reduction in the level of contaminants sufficient to protect the public health, if it is not feasible to establish the level of the contaminants in water in a public water system; and

(3) Establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment techniques as determined in paragraph (2) of this subsection. These rules may provide for:

a. The minimum quality of raw water which may be taken into a public water system;

b. A program of laboratory certification;

c. Monitoring and analysis;

d. Record-keeping and reporting;

e. Notice of noncompliance, failure to perform monitoring, variances and exemptions;

f. Inspection of public water systems; inspection of records required to be kept; and the taking of samples;

g. Criteria for design and construction of new or modified public water systems;

h. Review and approval of design and construction of new or modified public water systems;

i. Siting of new public water system facilities;

j. Variances and exemptions from the drinking water rules; and

k. Additional criteria and procedures as may be required to carry out the purpose of this Article.

(b1) The rules may also establish criteria and procedures to insure an adequate supply of drinking water. The rules may:

(1) Provide for record keeping and reporting.

(2) Provide for inspection of public water systems and required records.

(3) Establish criteria for the design and construction of new public water systems and for the modification of existing public water systems.

(4) Establish procedures for review and approval of the design and construction of new public water systems and for the modification of existing public water systems.

(4a) Limit the number of service connections to a public water system based on the quantity of water available to the public water system, provided that the number of service connections shall not be limited for a public water system operating in accordance with a local water supply plan that meets the requirements of G.S. 143-355(*l*).

(5) Establish criteria and procedures for siting new public water systems.

(6) Provide for variances and exemptions from the rules.

(7) Provide for notice of noncompliance in accordance with G.S. 130A-324.

(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems.

(c) The drinking water rules may be amended as necessary in accordance with required federal regulations. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 417, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 826, s. 1; 1993 (Reg. Sess., 1994), c. 776, s. 15.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added subsection (b2).

ARTICLE 11.

Wastewater Systems.

§ 130A-333. Purpose.

CASE NOTES

Senior Engineer and Branch Head Were Public Employees. — The positions of Senior Environmental Engineer in the On-Site Sewage Branch of the Department of Environment, Health, and Natural Resources, and Branch Head of the On-Site Sewage Branch of the Department of Environment, Health, and Natural Resources did not appear to be established by law, nor do they require an oath of office; the duties of these positions appeared to be more ministerial than discretionary in nature. Therefore both defendants were public employees, and as such were subject to liability in a civil suit for mere negligence in the performance of their jobs. EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide a wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

(1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and

(2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and

(3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, standards for operation and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. The permits shall be valid for a period prescribed by the rules, except that improvement permits shall be valid for a period of five years, and may be renewed upon a showing satisfactory to the Department or the local health department that the system is in compliance with the current rules and this Article. The period of time for which the permit is valid and a statement that the permit is subject to revocation if site plans or the intended use change shall be displayed prominently on both the application form for the permit and the permit.

(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c.

857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2; 1989, c. 727, s. 147; c. 764, ss. 6, 7; 1989 (Reg. Sess., 1990), c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 4; 1993, c. 173, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, rewrote subsection (h).

CASE NOTES

Cited in EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

§ 130A-336. Improvement permit required.

CASE NOTES

Cited in EEE-ZZZ Lay Drain Co. v. North Carolina Dep't of Human Resources, 108 N.C. App. 24, 422 S.E.2d 338 (1992).

ARTICLE 14.

Dental Health.

§ 130A-366. Department to establish dental health program.

(a) The Department shall establish and administer a dental health program for the delivery of preventive, educational and dental care services to preschool children, school-age children, and adults. The program shall include, but not be limited to, providing teacher training, adult and child education, consultation, screening and referral, technical assistance, community coordination, field research and direct patient care. The primary emphasis of the program shall be the delivery of preventive, educational, and dental care services to preschool children and school-age children.

(b) The Commission shall adopt rules necessary to implement the program. (1983, c. 891, s. 2; 1993, c. 321, s. 269.)

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, added the third sentence to subsection (a).

ARTICLE 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

§ 130A-389. Autopsies.

CASE NOTES

The doctrine of governmental immunity protects a medical examiner from liability for alleged negligence when he was officially requested by another medical examiner to conduct an autopsy to serve the public interest. Cherry v. Harris, 110 N.C. App. 478, 429 S.E.2d 771, cert. denied, 335 N.C. 171, 436 S.E.2d 371 (1993).

§ 130A-390. Exhumations.

CASE NOTES

Cited in Batcheldor v. Boyd, 108 N.C. App. 275, 423 S.E.2d 810 (1992).

Part 3. Uniform Anatomical Gift Act.

§ 130A-410. Use of tissue declared a service; standard of care; burden of proof.

Legal Periodicals. — For note, "The Legal Liability of Blood Donor Services and Transfusion Providers in the Wake of the AIDS Crisis," see 290 N.C. Cent. L.J. 20 (1992).

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Quoted in Doe v. American Nat'l Red Cross, 798 F. Supp. 301 (E.D.N.C. 1992).

ARTICLE 17.

Childhood Vaccine-Related Injury Compensation Program.

§ 130A-431. (Effective October 1, 1994 — See editor's note) Certain vaccine diversions made felony.

Any person who (i) receives a vaccine designated by the manufacturer for use in the State, (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or indirectly profits as a result of this diversion, is guilty of a Class I felony. The fine shall be twenty-five dollars ($25.00) per dose of the diverted vaccine or one hundred thousand dollars ($100,000), whichever is less. A health care professional convicted of a Class I felony pursuant to this section who is found by the court to have diverted more than 300 doses of covered vaccine shall have his license suspended for one year. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 5; 1993, c. 539, s. 1306; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felony" for "Class J felony" in the first and third sentences, and deleted "punishable by imprisonment up to three years, or a fine, or both" at the end of the first sentence.

§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.

(a) Notwithstanding any law to the contrary, the Secretary may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either within or without the State for the purchase of covered vaccines and may provide for the distribution or sale of the covered vaccines to health care providers. Local health departments shall distribute the covered vaccines at the request of the Department. The Secretary shall adopt rules to implement this Article except for subsection (b) of this section.

(b) A health care provider who receives vaccine from the State may charge no more than a reasonable fee established by the Commission for Health Services for the administration of the vaccine. Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient. (1985 (Reg. Sess., 1986), c. 1008, s. 2; 1987, c. 215, s. 7; 1989, c. 727, s. 153; 1993, c. 321, s. 281(b).)

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, added the subsection designations; in present subsection (a) deleted the former third and fourth sentences which read "The Secretary may charge a fee for providing a covered vaccine to a health care provider. The fee shall be set at an amount that covers the cost of the vaccine to the Department, plus the cost to the Department of storing and distributing the vaccine", and added "except for subsection (b) of this section" at the end; in the first sentence of present subsection (b) substituted "than a reasonable fee established by the Commission for Health Services for the administration of the vaccine" for "than the cost of the vaccine and a reasonable fee for the administration of the vaccine."

ARTICLE 18.

Health Assessments for Kindergarten Children in the Public Schools.

§ 130A-440. Health assessment required.

(a) Every child in this State entering kindergarten in the public schools shall receive a health assessment. The health assessment shall be made between the first of January prior to school entry and the date of school entry. No child shall attend kindergarten unless a health assessment transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the health assessment required by this section, is presented to the school principal. The medical provider, or the parent, guardian, or person *in loco parentis*, must present a completed health assessment transmittal form to the principal of the school on or before the child's first day of attendance. If a health assessment transmittal form is not presented on or before the first day, the principal shall present a notice of deficiency to the parent, guardian, or responsible person. The parent, guardian, or responsible person shall have 30 calendar days from the first day of attendance to present the required health assessment transmittal form for the child. Upon termination of 30 calendar days, the principal shall not permit the child to attend the school until the required health assessment transmittal form has been presented.

(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function.

(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Screening.

(d) This Article shall not apply to children entering kindergarten in private church schools, schools of religious charter, or qualified nonpublic schools, regulated by Article 39 of Chapter 115C of the General Statutes. (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1987, c. 114, s. 1; 1989, c. 727, s. 155; 1993, c. 124, s. 1.)

Effect of Amendments. — The 1993 amendment, effective June 7, 1993, and applicable to children entering kindergarten in the 1994-95 school year, rewrote subsection (a); in subsection (b), inserted "dental screening and" following "may also include" and substituted "for" for "which may include"; and substituted "115C" for "115" in subsection (d).

§ 130A-441. Reporting.

(a) Health assessment results shall be submitted to the school principal by the medical provider on health assessment transmittal forms developed by the Department and the Department of Public Instruction.

(b) Each school having a kindergarten shall maintain on file the health assessment results. The files shall be open to inspection by the Department, the Department of Public Instruction, or their authorized representatives and persons inspecting the files shall maintain the confidentiality of the files. Upon transfer of a child to another kindergarten, a copy of the health assessment results shall be provided upon request and without charge to the new kindergarten.

(c) Within 60 calendar days after the commencement of a new school year, the principal shall file a health assessment status report with the Department on forms developed by the Department and the Department of Public Instruction. The report shall document the number of children in compliance and not in compliance with G.S. 130A-440(a). (1985 (Reg. Sess., 1986), c. 1017, s. 1; 1989, c. 727, s. 156; 1993, c. 124, s. 2.)

Effect of Amendments. — The 1993 amendment, effective June 7, 1993, and applicable to children entering kindergarten in the 1994-95 school year, inserted "health assessment transmittal" in subsection (a); substituted "60 calender days" for "90 days", and deleted "of Public Instruction" following "status report with the Department" in subsection (c).

ARTICLE 19.

Asbestos Hazard Management.

§ 130A-444. Definitions.

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

(1) "AHERA" means Title II, Asbestos Hazard Emergency Response Act of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ("ASHARA").

(2) "Asbestos" means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(3) "Asbestos containing material" means material which contains more than one percent (1%) asbestos, including friable asbestos containing material and nonfriable asbestos containing material.

(3a) "Asbestos NESHAP for renovations and demolitions" means Title II, National Emission Standards for Hazardous Air Pollutants, specifically those regulations pertaining to regulation of asbestos in renovations and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended.

(4) "Abatement" means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing mate-

rial. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.

(5) "Friable" means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Management" means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.

(6a) "Person" means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.

(7) "Public area" means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590 (codified as amended in scattered sections of U.S.C.).

(8) "Removal" means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.

(9) "Residence" means any single family dwelling or any multi-family dwelling of fewer than 10 units. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, in subdivision (1) substituted "Response Act" for "Response," deleted "Pub. L. 99-519, 100 Stat. 2970," added at the end "by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 (ASHARA)"; substituted "asbestos" for "asbestos by area" in subdivision (3); added subdivisions (3a) and (6a); and substituted "(codified as amended in scattered sections of U.S.C.)" for "29 U.S.C. § 651 et seq., as amended" in subdivision (7).

§ 130A-447. Accreditation of persons performing asbestos management and approval of training courses.

(a) No person shall commence or continue to perform asbestos management activities unless he has been accredited by the Department. No person shall commence or continue to provide asbestos related training courses unless the course has been approved by the Department. The Commission shall adopt rules governing the accreditation of persons performing asbestos management activities and the approval of training courses. Such rules shall include categories of accreditation and shall specify appropriate education, experience, and training requirements. The rules shall establish separate categories of accreditation for inspectors, management planners, abatement designers, supervisors, workers, air monitors, and supervising air monitors. These rules shall be at least as stringent as the accreditation plan required under AHERA and regulations adopted pursuant thereto.

(b) A person who applies for accreditation in the worker category may engage in asbestos containing material management activities as though he were accredited in the worker category for up to 90 days after the date he submits his application. No person whose application is rejected may continue to engage in asbestos containing material management activities under this subsection.

(c) The following persons are exempt from the accreditation requirements:

(1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).

(2) A person performing asbestos containing material management activities in his personal residence.

(3) Governmental regulatory personnel performing inspections of asbestos containing material management activities solely for the purpose of determining compliance with applicable statutes or regulations.

(4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993). (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, added "and approval of training courses" in the section catchline; in subsection (a) added the second sentence, substituted "persons performing asbestos management activities and the approval of training courses" for "such persons" in the third sentence, substituted "supervising air monitors" for "management consultants" in the fifth sentence; substituted "small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt, E, Appendix C (1993)" for "asbestos containing material management activities in nonpublic areas of the building" in subdivision (c)(1); substituted "residence." for "residence;" in subdivision (c)(2); in subdivision (c)(3) inserted "inspections of" and substituted "activities solely for the purpose of determining compliance with applicable statutes or regulations" for "services and authority of federal, State, or local regulations or rules; and"; and substituted "performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993)" for "such activities disturb less than 35 cubic feet, 160 square feet, or 260 linear feet of asbestos containing material per job, or when engaged in such activities under the supervision of an accredited supervisor" in subdivision (c)(4).

§ 130A-448. Asbestos management accreditation fees and course approval fees.

(a) The Department shall establish and collect asbestos containing material management accreditation and annual renewal fees to support the asbestos hazard management program. The fees shall not exceed one hundred dollars ($100.00) per accreditation category, except that the fee for the abatement worker category shall not exceed twenty-five dollars ($25.00). A person who is accredited in more than one category shall pay a fee for each category.

(b) The Department shall establish and collect fees for approving asbestos management training courses and fees for renewing course approval annually to support the asbestos hazard management program. The fees for approving a training course shall not exceed one thousand five hundred dollars ($1,500) for each course. The annual renewal fees shall not exceed five hundred dollars ($500.00) for each course. Each category of a training course shall be subject to a separate fee for its initial approval and a separate fee for its annual renewal. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, substituted "fees and course approval fees" for "fees" in the catchline of this section; added the subsection designation (a); and added subsection (b).

§ 130A-451. Commission to adopt rules.

For the protection of the public health, the Commission shall adopt rules to implement this Article, AHERA, and the asbestos NESHAP for renovations and demolitions. (1989, c. 724, s. 1; 1993 (Reg. Sess., 1994), c. 686, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, substituted "Article, AHERA, and the asbestos NESHAP for renovations and demolitions" for "Article and AHERA."

§ 130A-452. Local air pollution programs.

(a) The Department may authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if that program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if the local air pollution program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution program shall continue to be authorized by the Department to enforce the asbestos NESHAP for renovations and demolitions so long as the program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission pursuant to subsection (b) of this section.

(b) The Commission shall adopt rules regarding the authorization of local air pollution programs to enforce the asbestos NESHAP for renovations and demolitions. (1993 (Reg. Sess., 1994), c. 686, s. 7.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 686, s. 8, made this section effective October 1, 1994, and applicable to violations occurring on or after that date.

§§ 130A-453 through 130A-454: Reserved for future codification purposes.

ARTICLE 20.

Occupational Health.

§ 130A-455. Reportable diseases, illnesses, and injuries.

The Commission shall adopt rules establishing a list of serious and preventable occupational injuries that occur while working on a farm, and serious and preventable occupational diseases and illnesses to be reported to the Department. Occupational diseases and illnesses are defined as those diseases and illnesses which result from exposure to a health hazard in the workplace. The Commission shall adopt rules establishing the specific information to be submitted when making a report required by this Article, time limits for reporting, and the form of the report. The rules adopted by the Commission shall avoid duplication of reporting and minimize the cost to the physicians, medical facilities, laboratories, or other persons reporting under this act. (1993, c. 486, s. 1.)

Editor's Note. — Session Laws 1993, c. 486, s. 2 makes this Article effective January 1, 1994.

§ 130A-456. Physicians to report.

A physician licensed to practice medicine in this State who treats a person for an occupational injury that occurred while working on a farm or an occupational disease, illness, declared by the Commission to be reportable, shall report the information required by the Commission to the Department. (1993, c. 486, s. 1.)

§ 130A-457. Medical facilities to report.

A medical facility in which there is a patient who has an occupational injury that occurred while working on a farm, or an occupational disease, illness, declared by the Commission to be reportable, may report information specified by the Commission to the Department. (1993, c. 486, s. 1.)

§ 130A-458. Persons in charge of laboratories to report.

A person in charge of a clinical or pathological laboratory providing diagnostic service in this State shall report to the Department laboratory findings related to occupational diseases, illnesses, for which laboratory reporting is required by the Commission. (1993, c. 486, s. 1.)

§ 130A-459. Immunity of persons who report.

A person who in good faith makes a report pursuant to the provisions of this Article shall be immune from any civil liability that might otherwise be incurred or imposed as a result of making the report. (1993, c. 486, s. 1.)

§ 130A-460. Report to Department of Labor.

(a) Each report to the Department pursuant to the Article shall be evaluated for its potential indication of an exposure to a health hazard. If an on-site visit is deemed necessary, a copy of the report for work sites for which the Department of Labor has jurisdiction for the enforcement of occupational health laws shall be forwarded to the Department of Labor. The Department of Labor and the Department may exchange information regarding specific workplaces and conditions and such information shall retain the same confidentiality provided by the originating agency.

(b) If the Department of Labor determines that an on-site visit is necessary for enforcement purposes, the Department of Labor shall inform the Department within 30 days of the receipt of the report, and a representative of the Department may participate in the visit. The Department shall not contact or otherwise notify any employer of a pending investigation prior to the determination by the Department of Labor regarding the necessity of an on-site visit and shall not give advance notice of a visit if one is necessary.

(c) Subsection (b) shall not apply to inspections conducted for the Industrial Commission pursuant to G.S. 97-76 and shall not affect the allocation of responsibilities set forth in G.S. 74-24.4(c). (1993, c. 486, s. 1.)

Chapter 131A.

Health Care Facilities Finance Act.

Sec.
131A-2. Legislative findings.

§ 131A-2. Legislative findings.

It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Chapter is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1; 1993, c. 553, s. 42.)

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, in the last paragraph substituted "Chapter" for "Part".

§ 131A-3. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

Chapter 131C.

Editor's Note. — The legislation and annotations affecting Chapter 131C have been included in a recently published replacement chapter.

Chapter 131D.

Editor's Note. — The legislation and annotations affecting Chapter 131D have been included in a recently published replacement chapter.

Chapter 131E.

Editor's Note. — The legislation and annotations affecting Chapter 131E have been included in a recently published replacement chapter.

Chapter 132.

Public Records.

§ 132-1. "Public records" defined.

Local Modification. — Chatham: 1993 (Reg. Sess., 1994), c. 642, s. 1(c); City of Kinston: 1993 (Reg. Sess., 1994), c. 648, s. 1(c); city of Lexington: 1993 (Reg. Sess., 1994), c. 602, s. 1(c); town of Oriental: 1993 (Reg. Sess., 1994), c. 695, s. 1(c).

For additional local modification notes, see the main pamphlet.

Cross References. — For provision that the report and affidavit required by § 58-21-35 and the quarterly report required by § 58-21-80 are not public records under this section, see § 58-21-35.

CASE NOTES

Criminal Investigatory Information. — Copies of recordings the plaintiff sought to obtain pursuant to this section were unquestionably gathered by city police department in the course of a criminal investigation and were part of the State's file in a pending criminal action; however plaintiff was precluded under Article 48 of ch. 15A, § 15A-901 et seq. Piedmont Publishing Co. v. City of Winston-Salem, 334 N.C. 595, 434 S.E.2d 176 (1993).

Records made by contractors and subcontractors (contractors) of the North Carolina Low-Level Radioactive Waste Management Authority, kept by the contractors and not actually received by the Authority, are not public records, as defined under this section, until they are received by the Authority in the proper exercise of its discretion. Durham Herald Co. v. North Carolina Low-Level Radioactive Waste Mgt. Auth., 110 N.C. App. 607, 430 S.E.2d 441, cert. denied, 334 N.C. 619, 435 S.E.2d 334 (1993).

§ 132-3. (Effective October 1, 1994 — See editor's note) Destruction of records regulated.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 132-4. (Effective October 1, 1994 — See editor's note) Disposition of records at end of official's term.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 132-5. (Effective October 1, 1994 — See editor's note) Demanding custody.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 132-6. Inspection and examination of records.

CASE NOTES

Cited in Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

OPINIONS OF ATTORNEY GENERAL

Test scores and applications for licensure and related materials received by the North Carolina Board for Licensing Geologists are not subject to public inspection and examination under this section. See opinion of the Attorney General to Charles H. Gardner, Dir., Division of Land Resources Department of Environment, Health, and Natural Resources, 60 N.C.A.G. 76 (1991).

§ 132-9. Access to records.

Cross References. — For provision allowing award of attorneys' fees in a successful action, see § 6-19.2.

Chapter 133.

Public Works.

Article 1.
General Provisions.

Sec.
133-3. Specifications to carry competitive items; substitution of materials.
133-4. (Effective October 1, 1994 — See editor's note) Violation of Chapter made misdemeanor.
133-4.1. Guaranteed energy savings contracts.

Article 3.
Regulation of Contractors for Public Works.

Sec.
133-23. Definition.
133-28. Civil damages; liability; statute of limitations.
133-31. (Effective October 1, 1994 — See editor's note) Perjury; punishment.
133-32. Gifts and favors regulated.

ARTICLE 1.

General Provisions.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Editor's Note. — As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Reg. Sess., 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in the implementation of providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Reg. Sess., 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of State Budget and Management from the requirements of subsection (b) of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 41(b).

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

As to exemption of the Office of State Construction of the Department of Administration from subsection (g) of this section to the extent necessary to expedite delivery with respect to construction of certain state prison and youth service facilities, see Session Laws 1993, c. 550, s. 6.

As to exemption of the Office of State Construction of the Department of Administration from the requirements of subsection (g) of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples of items of equal or equivalent design, which would establish an acceptable range for items of equal or equivalent design. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1.)

Effect of Amendments. — The 1993 amendment, effective July 13, 1993, and applicable to all construction and renovation projects for any city, county or State works that start the design process on or after that date, rewrote this section.

§ 133-4. (Effective October 1, 1994 — See editor's note) Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars ($500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" following "shall".

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

ARTICLE 2.

Relocation Assistance.

§ 133-7. Definitions.

Editor's Note. —
In the historical citation for this section in the main volume, "1989, c. 25" should be "1989, c. 28."

§ 133-9. Replacement housing for homeowners.

Local Modification. — City of Durham: 1993, c. 304, s.1.

ARTICLE 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" shall mean a corporation with respect to which another corporation by virtue of its shareholdings alone has legal power, either directly or indirectly through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors. A corporation is a subsidiary of each such corporation, including any corporation through which this legal power may be indirectly exercised. (1981, c. 764, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 38.)

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 24, 1992, substituted the language beginning "shall mean a corporation" for "is used as defined in G.S. 55-2(9)" in subsection (c).

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within six years of the date of accrual of the cause of action. (1981, c. 764, s. 1; 1993, c. 441, s. 1.)

Effect of Amendments. — The 1993 amendment, effective July 22, 1993, substituted "six years" for "three years" in the second sentence.

§ 133-31. (Effective October 1, 1994 — See editor's note) Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class I felon. (1981, c. 764, s. 1; 1993, c. 539, s. 1307; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felon" for "Class H felon".

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

(1) Has a contract with a governmental agency; or
(2) Has performed under such a contract within the past year; or
(3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contract; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contracts; or
(2) Awarding or administering public contracts; or
(3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) **(Effective October 1, 1994 — See editor's note)** A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994,

and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (b).

Chapter 134A.

Editor's Note. — The legislation and annotations affecting Chapter 134A have been included in a recently published replacement chapter.

Chapter 135.

Editor's Note. — The legislation and annotations affecting Chapter 135 have been included in a recently published replacement chapter.

Chapter 136.

Roads and Highways.

Article 2.

Powers and Duties of Department and Board of Transportation.

Sec.
136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.
136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.
136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

Article 3A.

Streets and Highways in and around Municipalities.

136-66.1. Responsibility for streets inside municipalities.

Article 6.

Ferries, etc., and Toll Bridges.

136-82.2. State toll bridges.

ARTICLE 1.

Organization of Department of Transportation.

§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.2 provides: "Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides that the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-13. (See editor's note for date change) Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-14. (Effective October 1, 1994 — See editor's note) Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. (See editor's note for date change) Powers of Department of Transportation.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
II. Power of Eminent Domain.

I. GENERAL CONSIDERATION.

Pedestrian Member of Protected Class. — Plaintiff, as a pedestrian lawfully and properly using a telephone booth, was a member of the Class A regulation prohibiting installation of phone booths in rights-of-way was intended to protect. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Violation of Administrative Regulation Is Negligence Per Se. — When the violation of an administrative regulation enacted for safety purposes is criminal (subsection (10)), that violation is negligence per se in a civil trial unless otherwise provided. Baldwin v. GTE S., Inc., 335 N.C. 544, 439 S.E.2d 108 (1994).

Cited in DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471 (1993).

II. POWER OF EMINENT DOMAIN.

The obstruction of view of plaintiff's billboards due to the vegetation and trees planted by Department of Transporation (DOT) as part of the highway beautification project did not amount to a taking of plaintiff's property. Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-18.4. (Effective October 1, 1994 — See editor's note) Provision and marking of "pull-off" areas.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Rights Afforded by Former Version of this Section. — In enacting this section, the legislature has implicitly waived the Department of Transportation's sovereign immunity to the extent of the rights afforded in the former version of this section. Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said crossing or he may in his discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Secretary of Transportation upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten percent (10%) of the total benefits resulting from the project. The Secretary of Transportation shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Department of Transportation, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Department of Transportation, and the Department of Transportation shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Secretary of Transportation, said Secretary of Transportation is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Department of Transportation shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Department of Transportation and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Department of Transportation may provide. If the Department of Transportation shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Secretary of Transportation, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Department of Transportation. The Department of Transportation may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Department of Transportation by the railroad company. If the Department of Transportation shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Department of Transportation in the Superior Court of Wake County.

(e) **(Effective October 1, 1994 — See editor's note)** If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Secretary of Transportation for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Department of Transportation shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Secretary of Transportation, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Department of Transportation shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State highway system which have been constructed prior to July 1, 1959, or which shall be constructed thereafter shall be borne fifty percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Department of Transportation. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C.S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15; 1993, c. 539, s. 979; 1994, Ex. Sess., c. 14, s. 60; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 14, s. 60, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "dollars" preceding "($50.00)" in subsection (e).

§ 136-26. (Effective October 1, 1994 — See editor's note) Closing of State highways during construction; injury to barriers, warning signs, etc.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; or (iv) a rural water system operated by county as an enterprise system. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a); 1985 (Reg. Sess., 1986), c. 1018, s. 11; 1993 (Reg. Sess., 1994), c. 736, s. 1.)

Editor's Note. —

Session Laws 1993, c. 561, s. 64 of which is noted under this section, in s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 12, 1994, added "or (iv) a rural water system operated by county as an enterprise system" and made related changes.

OPINIONS OF ATTORNEY GENERAL

Qualification for Exemption. — On the date the Department of Transportation lets a contract for a highway improvement project, a water or sewer system organized pursuant to Chapter 162A must be in existence to qualify for an exemption from the requirement that water and sewer lines on state highway right of way be relocated at local expense. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

The existence of a right of way encroachment agreement did not affect the application of the exemption as the specific exemption contained in this section supersedes any conflicting provision of the agreement and would not be enforceable. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.

Editor's Note. — Session Laws 1993, c. 561, s. 65, effective July 1, 1993, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 136-32. (Effective October 1, 1994 — See editor's note) Other than official signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.1. (Effective October 1, 1994 — See editor's note) Misleading signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.2. (See editor's note for date change) Placing blinding, deceptive or distracting lights unlawful.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-33. (See editor's note for date change) Damaging or removing signs; rewards.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year.

In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

(1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,

(2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,

(3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and

(4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, added "or for the planning, construction, and maintenance of sidewalks along public streets and highways" at the end of the first paragraph.

ARTICLE 2A.

State Roads Generally.

§ 136-44.2A. Secondary road construction.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-44.5. Secondary roads; mileage study; allocation of funds.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars ($500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. — The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.

(2) The Municipal Street System. — In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.

(3) Maintenance of State Highway System by Municipalities. — Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair, improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.

(4) If the governing body of any municipality shall determine that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

a. Construction of curbing and guttering;
b. Adding of lanes for automobile parking;
c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to

that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

d. Constructing sidewalks.

e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2; 1993 (Reg. Sess., 1994), c. 690, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, substituted "sidewalks." for "sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes" in subdivision (4)d.

Article 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

CASE NOTES

Quoted in Dellinger v. City of Charlotte, 114 N.C. App. 146, 441 S.E.2d 626 (1994).

ARTICLE 5.

Bridges.

§ 136-72. (Effective October 1, 1994 — See editor's note) Load limits for bridges; penalty for violations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-80. (Effective October 1, 1994 — See editor's note) Fastening vessels to bridges misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6.

Ferries, etc., and Toll Bridges.

§ 136-82.2. State toll bridges.

(a) Toll. — The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars ($10.00) for a round trip or five hundred dollars ($500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. — The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. (1993 (Reg. Sess., 1994), c. 765, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 765, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 136-89. (Effective October 1, 1994 — See editor's note) Safety measures; guard chains or gates.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.58. (Effective October 1, 1994 — See editor's note) Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7.

Miscellaneous Provisions.

§ 136-90. (Effective October 1, 1994 — See editor's note) Obstructing highways and roads misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-91. (See editor's note for date change) Placing glass, etc., or injurious obstructions in road.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-92. (Effective October 1, 1994 — See editor's note) Obstructing highway drains misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-93. (Effective October 1, 1994 — See editor's note) Openings, structures, pipes, trees, and issuance of permits.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-94. (Effective October 1, 1994 — See editor's note) Gates projecting over rights-of-way forbidden.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102. (See editor's note for date change) Billboard obstructing view at entrance to school, church or public institution on public highway.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.4. (Effective October 1, 1994 — See editor's note) Penalty for violation of §§ 136-102.2 and 136-102.3.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.6. (See editor's note for date change) Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9.

Condemnation.

§ 136-103. Institution of action and deposit.

CASE NOTES

Use of Income Approach to Establish Value. — The decision in City of Statesville v. Cloaninger, 415 S.E.2d 111, 106 N.C. App. 10 (1992), appears to use the income approach to establishing property value when there are no comparable sales data and the income upon which the opinion of value is based is directly attributable to the land. DOT v. Fleming, 112 N.C. App. 580, 436 S.E.2d 407 (1993).

§ 136-108. Determination of issues other than damages.

CASE NOTES

Review on Appeal of Arbitrary and Capricious Conduct. — If condemnation proceedings are subject to review due to allegations of arbitrary and capricious conduct or abuse of discretion, and if the court finds safety to be of legitimate concern, the trial judge must make a finding of fact on that issue. Absent such a ruling, an appellate court cannot properly review the trial court's decision as to whether or not Department of Transportation's actions were arbitrary and capricious. DOT v. Overton, 111 N.C. App. 857, 433 S.E.2d 471, cert. granted, 335 N.C. 237, 439 S.E.2d 144 (1993).

§ 136-109. Appointment of commissioners.

CASE NOTES

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Cited in Adams Outdoor Adv. v. North Carolina DOT, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-112. Measure of damages.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Ferrell v. DOT, 334 N.C. 650, 435 S.E.2d 309 (1993); Guilford County v. Kane, 114 N.C. App. 243, 441 S.E.2d 556 (1994).

ARTICLE 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-125. (Effective October 1, 1994 — See editor's note) Regulation of scenic easements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in Whiteco Indus., Inc. v. Harrelson, 111 N.C. App. 815, 434 S.E.2d 229 (1993); Whiteco Indus., Inc. v. Harrington, 111 N.C. App. 839, 434 S.E.2d 234 (1993).

§ 136-129. Limitations of outdoor advertising devices.

Local Modification. — Buncombe and Surry Counties: 1993 (Reg. Sess., 1994), c. 559, ss. 1, 2.

§ 136-131.1. (Expires June 30, 1998 — See editor's note) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 725, s. 1, amended Session Laws 1981, c. 1147, s. 2, as amended by Session Laws 1983, c. 318, by Session Laws 1987, c. 1024, and by Session Laws 1989, c. 166, s. 1, to change the expiration date of this section from June 30, 1994, to June 30, 1998. This amendment became effective July 11, 1994, after the June 30, 1994 expiration date.

§ 136-135. (Effective October 1, 1994 — See editor's note) Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 12.

Junkyard Control Act.

§ 136-144. Restrictions as to location of junkyards.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

§ 136-145. (Effective October 1, 1994 — See editor's note) Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-147. Screening of junkyards lawfully in existence.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY
Attorney General of North Carolina